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## GENERAL NOTICE

### NOTICE 1025 OF 1997

#### DEPARTMENT OF TRADE AND INDUSTRY

##### LIQUOR: POLICY DOCUMENT AND BILL

The above-mentioned policy document and bill is hereby published for comment.

Interested persons are invited to furnish written comment and representations on both documents before or on **8 August 1997** to—

The Director-General  
Department of Trade and Industry  
Private Bag X84  
Pretoria  
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For attention: Ms Zelda van Heerden  
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## ALGEMENE KENNISGEWING

### KENNISGEWING 1025 VAN 1997

#### DEPARTEMENT VAN HANDEL EN NYWERHEID

##### DRANK: BELEIDSDOKUMENT EN WETSONTWERP

Bogenoemde beleidsdokument en wetsontwerp word hiermee vir kommentaar gepubliseer.

Belanghebbende persone word versoek om voor of op **8 Augustus 1997** hul skriftelike kommentaar en vertoë aangaande beide dokumente te verskaf aan—

Die Direkteur-generaal  
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# **LIQUOR POLICY PAPER**

## **DEPARTMENT OF TRADE AND INDUSTRY**

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### **DEPARTMENT OF TRADE AND INDUSTRY**

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## **LIQUOR POLICY PAPER**

### **CHAPTER ONE**

#### **Introduction**

#### **1.1 VISION**

The people of South Africa recognise the importance of an approach to economic and social policy which balances the broader benefits and costs of our daily activities. Government is proposing two major policy shifts in its role as regulator: firstly, to restructure the liquor industry and give priority to facilitation of entry and empowerment of new entrants; and secondly, to better reflect all costs associated with liquor, including alcohol-related problems in health and other fields. Our vision is to arrive at the appropriate mix of enterprise and regulation, to balance the interests of all participants in the liquor trade and of society as a whole.

#### **1.2 PROBLEM STATEMENT**

##### **1.2.1 The use and abuse of liquor**

1.2.1.1 The history of liquor in South Africa is an integral part of the history of segregation and apartheid. Liquor was alternately made available, and prohibited, as a means of economic and social control. Liquor was used to attract and retain workers on the farms, mines and urban industry. Legislation was promulgated to prohibit Africans from producing and obtaining liquor. Liquor was used to entrench segregation and apartheid in the urban areas.

1.2.1.2 Responses by ordinary people to such control have included both complex struggles and ambivalence, involving defiance and resistance as well as abuse and social decay. For many, the brewing and consumption of alcohol in urbanising communities represented a form of continuity with rural life, a means of economic survival and a social response to the harsh realities of urban life. Alcohol was also increasingly abused, leading to increasing levels of conflict in the family, violence, crime and alcohol related disease. There remains a legacy of untold damage to the fabric of society, including serious health impacts on both users of alcohol and their children, domestic violence, child abuse, road accidents, crime and the associated economic costs.

1.2.1.3 The liquor industry evolved into one now characterised by a few companies with high levels of horizontal and

vertical integration. In addition, there is a large illegal sector, confined mainly to retail, resulting in employment of a mainly survivalist nature.

### **1.2.2 Alcohol as a form of social and economic control**

- 1.2.2.1** Liquor has been the basis, in South Africa's history, for a great deal of explicit authoritarian activity by the police. Raids, harassment, and arrests, were common, and during the 1950's prosecutions and imprisonment affected more than 200 000 black people annually. Only in 1962 was it made legal for black people to purchase from white liquor outlets, and then under strict conditions.
- 1.2.2.2** Liquor was traditionally used as a means of labour mobilisation and control. Employers in the emerging diamond and gold industries used alcohol as a means of attracting workers from the rural areas and keeping them on the mines. Employers in the wine industry and other farms in the Cape used similar methods.
- 1.2.2.3** The demand for black labour led to the emergence and intensified use of the "tot" (wine-for-work) system on the wine farms of the Western Cape. Employers provided wine rations to farm workers at various times of the working day as a repressive and debilitating method of labour control. The mines used alcohol as a magnet to attract workers and to confine them to the closed compound. Tokens which were redeemable at compound stores and beerhalls were used as a form of payment. Urban employers used sorghum beer as a form of payment.
- 1.2.2.4** The "tot" system is still widespread on the wine and other farms of the Western and Northern Cape today. Its practice takes on many forms, including payment in lieu of wages, provision of large quantities on weekends in addition to wages and payment of casual labour in the form of wine in small towns and urban areas.
- 1.2.2.5** In townships, alcohol was relatively tightly regulated, and segregation of drinking spaces contributed to the broader racial hierarchy and lack of interracial mixing. State licensing requirements and municipal monopolies on production of sorghum beer also stifled black enterprise such as brewing and retail shebeens. The

state's activities had some of their most important negative affects on women's survival income.

1.2.2.6

In addition, alcohol reflected the broader pattern of racial segregation that evolved over more than three centuries in South Africa. Abuse of alcohol was often cited in legislation governing the prohibition of drunkenness and disorder, which had differential applications across racial lines.

1.2.2.7

In townships, municipal beerhalls were constructed by apartheid local governments as a means of self-financing township development. Indeed, alcohol became the primary source of revenue for Bantu Administration Boards, later named Development Boards. But beer sales were an insufficient source of revenue, so townships services were always underfunded. In addition, local administrators used alcohol as a means of social engineering and control. In 1976, beerhalls and liquor stores were identified as symbols of oppression and destroyed. The "Black Christmas" campaigns of the 1980's included boycotts of drinking establishments.

1.2.2.8

The role of liquor control in South Africa's apartheid history was, hence, formidable, spanning authoritarian police activity, the stifling of local enterprises, the financing of residential segregation, and the control of leisure. With control of liquor playing these multiple roles, it is clear that alcohol was the basis for the accumulation of massive wealth and the concentration of commercial, financial and political power in the hands of a few. In turn, resistance emerged and led to enormous popular resentment about beerhalls.

1.2.2.9

Due in part to this resistance, and to the inability of the state to impose illegitimate laws and regulations (as well as police corruption, incapacity and unwillingness to enforce the law), many people turned to illegal activity related to alcohol. Racially-biased regulation led to the criminalisation of tens of thousands of liquor traders and, ironically, to a regulatory breakdown which means that today, the state controls and licences less than 10% of the estimated 250 000 liquor outlets across South Africa.

1.2.2.10

In addition, the lack of development, high levels of unemployment, isolation and lack of stimulation in the province have contributed to particularly high levels of

alcohol abuse across poorer regions and in rural areas.

**1.2.2.11**

Given this background, a new approach to liquor policy must be ambitious but also extremely sensitive. It must seek to combine competing interests and serve the overall public good, not only that of those who produce, distribute, sell and consume liquor.

### **1.3 A NEW APPROACH TO LIQUOR POLICY**

#### **1.3.1 The new approach**

**1.3.1.1**

The proposed new liquor policy marks a decisive break with the past. It addresses two broad concerns: regulation of the production, distribution and sale of liquor (in part as a tool for correcting market imperfections); and controlling the economic and social costs of excessive alcohol consumption.

#### **1.3.2 The regulation of liquor production, distribution and sales**

**1.3.2.1**

New liquor regulation entails two key aspects: firstly, a change in legislation which will facilitate easy entry into the liquor trade; and secondly, harsh penalties for those who contravene the legislation.

**1.3.2.2**

The legislation which flows from this policy will seek to be fair and just; to redress the inequities and discrimination of the past; and to effectively regulate the liquor trade insofar as the social, economic, health, welfare and other needs of society are concerned.

**1.3.2.3**

New liquor laws must normalise the operation of this sector of the economy by pro-actively restructuring the sale and distribution of liquor to achieve economic empowerment of historically disadvantaged sectors of our society. In particular, new laws must seek to empower informal liquor traders - those individuals who earn their living by trading in liquor - but against whom the strictures of past and current legislation discriminate unfairly.

**1.3.2.4**

Normalisation of this sector must also ensure the participation of public representatives and of the public itself in the registration process.

**1.3.2.5** Recognising that liquor is a potentially harmful substance, and recognising that its abuse is widespread in our society, we seek to introduce laws which will regulate the sale and distribution of alcohol in the public interest and in a way which will promote economic development and empowerment.

**1.3.2.6** The legislation will include harsh penalties and will be enforced by an inspectorate which will monitor the industry and ensure that these penalties are imposed on those who contravene the legislation and act against the public interest. The Department of Trade and Industry is committed to ensuring compliance and has initiated a study on the establishment of inspectorate services.

**1.3.2.7** The initial legislation flowing from this policy must be enacted without delay in order to facilitate the necessary restructuring of the industry as rapidly as possible. However, that initial legislation must be seen as part of an ongoing process. There are various pieces of legislation relating to the liquor industry, including notably the Liquor Products Act and the Wine and Spirits Control Act under the Department of Agriculture, which must be reviewed. A process of consolidating this legislation in a consistent and coherent manner will be undertaken over the medium term.

### **1.3.3 Addressing the economic and social costs of excessive alcohol consumption**

**1.3.3.1** The first democratic government has demonstrated a new approach to policy in that policy formulation is taking the broader public interest into account. Many new policies explicitly incorporate cross-cutting socio-economic goals and objectives. They identify the social and economic costs of existing approaches as well as strategies to address these costs.

**1.3.3.2** The socio-economic costs of the historical development of alcohol production and consumption are enormous and must be addressed as a matter of urgency.



The Reconstruction and Development Programme provides a mandate to take strong action in mitigating the effects of liquor:

*"Millions of South Africans abuse alcohol, tobacco, cannabis (dagga), solvents, glue, and other harder drugs. Unless action is taken, substance abuse is likely to increase enormously. Abuse of those substances causes immense physical, mental and social damage and costs the country millions of rands each year. The RDP must aim to reduce greatly the present levels of substance abuse and to prevent any increase. Comprehensive strategies to change behaviour must include education programmes, reduction of advertising and increasing the price of tobacco and alcohol."*

- 1.3.3.3 The new liquor policy is therefor centrally concerned with making socio-economic interventions, particularly with regard to public health, welfare, transport, religion, gender and youth.

#### 1.4 LIQUOR POLICY OBJECTIVES

- 1.4.1 There are two primary objectives of the new policy: restructuring the liquor industry and addressing the socio-economic costs of alcohol abuse.

- 1.4.2 First, restructuring the liquor industry entails several objectives:

- 1.4.2.1 introduce a simplified procedure for entry into the liquor trade;
- 1.4.2.2 promote participation by communities and local government in the establishment and control of liquor outlets;
- 1.4.2.3 promote economic empowerment, job creation and small business development;
- 1.4.2.4 provide for severe and enforceable penal provisions for transgressors of the Act;
- 1.4.2.5 promote continuous training and development of service providers in the industry; and
- 1.4.2.6 monitor and evaluate trends and developments in the industry.

**1.4.3 Second, addressing the socio-economic costs of alcohol abuse entails the following objectives:**

- 1.4.3.1** promote public education programmes on the harmful effects of the abuse of liquor;
- 1.4.3.2** promote social responsibility programmes;
- 1.4.3.3** promote the establishment of recreational facilities for youth;
- 1.4.3.4** promote the establishment and maintenance of support structures for the rehabilitation of individuals and communities affected by alcohol abuse;
- 1.4.3.5** promote further research on the nature and extent of the socio-economic effects of alcohol abuse; and
- 1.4.3.6** promote interaction between government and civil society, notably civic, youth and religious formations.

**1.4.4** In the following pages, the interventions government envisages to achieve these objectives are set out. Public participation is seen as central not only to the way programmes are established and the way the new regulatory framework evolves, but also to monitoring and feeding back with input into ways in which local problems are more effectively addressed than in the past.

## **CHAPTER TWO**

### **Restructuring the Liquor Industry**

#### **2.1 INDUSTRY STRUCTURE AND CONDUCT**

##### **2.1.1 Industry characteristics**

- 2.1.1.1** The liquor industry is characterised by a high degree of monopolisation. There is extensive horizontal and vertical integration. At the lowest tier, there is a large unregulated informal sector. And there remains a strong racial bias within the industry. Each issue is considered in examining the key components of the industry.

##### **2.1.2 Production**

- 2.1.2.1** Production of liquor is characterised by a high degree of monopolisation. Two corporations, SAB and RK Investments (Rembrandt and KWV), dominate the industry. SAB has interests in beer as well as wine and spirits, whereas RK Investments is primarily involved in wine and spirits.
- 2.1.2.2** Most South African wine is produced in the Western Cape. The major producer is KWV. Other producers include Distillers, Stellenbosch Farmers Winery, Gilbeys, Douglas Green Bellingham and E Snell and Co.
- 2.1.2.3** The main wholesalers of wine and spirits are Distillers, Stellenbosch Farmers Winery, Gilbeys, Seagram and DGB. They are all members of the Cape Wine and Spirit Institute (CWSI), which accounts for 90% of wine and spirit sales in South Africa.
- 2.1.2.4** Distillers and Stellenbosch Farmers Winery play a major role in the retail sector through their ownership of Western Province Cellars.
- 2.1.2.5** Distillers and Stellenbosch Farmers Winery are, in turn, controlled by RK Investments and SAB. In each case, RK Investments holds 60% of shares and SAB 30%.
- 2.1.2.6** Almost all malt beer consumed in South Africa is produced in the country, primarily by one producer, South African Breweries (SAB). SAB Beer Division has 98% of the local malt market. (Malt Beer or "Clear Beer" is brewed from malted barley and flavoured with hops, includes lager, ale, stout etc, and in SA has an



alcohol content of between 4 and 5,5%. Sorghum Beer is brewed from sorghum malt and mielie-grits. The maximum alcohol content of sorghum beer is restricted by law to 3% by weight).

2.1.2.7 There has been a massive growth in per capita malt beer consumption in South Africa since the early 1970's. In 1970, malt beer consumption was 13,72 litres per capita. By 1987, it was 51,04 litres, an almost fourfold increase. Since then, the rate of increase has slowed down.

2.1.2.8 Malt beer sales grew by 2,2% in 1995 to 2 330 000 000 litres, after a growth of 2,3% the previous year. Malt beer has a market share of 81% of the total of all categories of alcohol. More than half of all malt beer is sold through unlicensed outlets.

2.1.2.9 National Sorghum Breweries established Vivo Breweries which opened a malt beer plant in July 1994. An Indian company, United Breweries, bought 30% shares in NSB. However, to date NSB and Vivo have not made an impact on SAB's virtual monopoly.

2.1.2.10 Cider, draught beer and smaller volume labels are growing well ahead of the market, but off a low base. Namibia Breweries showed a 30% surge in sales. These sales are mainly through the formal sector, but Licensee's Guardian predicts that in the medium term the informal sector may also turn to other brands.

2.1.2.11 SAB's monopoly is reflected in its performance. SAB's beer interest (including South African Breweries Beer Division and International Beer Interests) have consistently performed better than SAB's other interests, including complementary beverages, retail and hotels, and manufacturing.

2.1.2.12 Despite the slow down of growth of per capita consumption since the late 1980's, SAB's beer interests have shown consistently high growth in turnover and profit after tax. From 1990 to 1996, turnover grew at a compound growth rate of 21,0% per annum. Profit after tax grew at 26,1% per annum. South African Breweries Beer Division's attributable earnings grew from R806 million in 1995 to R1 003 million in 1996, a 24,4% increase.

### 2.1.3 Distribution and Sales

2.1.3.1 Traditionally, the variety of establishments formally licensed for sale of alcohol have been located nearly exclusively in former white-only areas: Hotels, Restaurants, Theatres, Clubs, Special Accommodation (including some hotels, lodges, etc); Special Other (including pool clubs, music venues, nightclubs, etc); Section 4 (including colleges, institutions, parastatals, etc.) and Wholesale and Grocer's Wine. Licensed Liquor Taverns are all in the former black areas. Licences for Special Eating Houses (including bars, lounges, some restaurants, residences, etc), Liquor Stores and Special Off-Consumption Licences have been granted to establishments in both former white and black areas.

2.1.3.2 The bulk of increased licensing of liquor outlets is accounted for by the rapid growth in on-consumption establishments in the former white areas. The number of restaurant licences increased by 81% from 1992 to 1995 and has continued to increase rapidly since. There has been a modest growth in the number of liquor stores, but the number of liquor taverns declined after 1992 and has not yet recovered to the pre-1992 figure.

2.1.3.3 Historically, South African legislation prevented vertical integration in the alcohol industry and only allowed limited integration at the retail level. However, more recent government policy has allowed greater horizontal and vertical integration. The liquor store sector today consists of:

2.1.3.3.1 the vertically integrated Western Province Cellars (WPC) group;

2.1.3.3.2 independent retail chains, the biggest of which are: Solly Kramer's, Aroma Drop Inn, Picardi/Rebel, Spot-On and Makro; and

2.1.3.3.3 a large number of individually owned stores.

2.1.3.4 In South Africa as a whole, there are approximately 0,74 liquor stores per 1 000 of the population in formerly white areas and only 0,05 in traditionally black residential areas. In other words, there are 15 times as

many liquor stores per unit population in former white areas. Although there is not a complete overlap between the racial breakdown of ownership and location, the vast majority of liquor stores are still white owned. Many of the white owned stores are situated on the periphery of the townships and sell almost exclusively to township customers.

#### 2.1.3.5

With respect to unlicensed, illegal outlets - particularly shebeens - there are large numbers, mainly in traditionally black areas. Because they are unlicensed, it is not possible to arrive at a precise figure, but various attempts have been made to quantify the number and it is possible to reach a rough estimate. In a national survey, with a sample of 5 000 households, the Eskom OMNI Panel identified 718 000 "in home businesses" in South Africa. Of this total, 118 200, or 16%, are related to liquor. This figure includes 109 600 shebeens and 8 600 brewers. In 1995, a study conducted on behalf of SAB estimated that in Gauteng alone there were 35 889 shebeens (excluding spaza shops). Extrapolation to the national level on the basis of population size gives a figure of roughly 190 000. This is perhaps an overestimate, in that Gauteng is highly urbanised (the number of shebeens per unit population tends to be somewhat higher in urban areas). Such data suggest that there are particularly high number of shebeens in certain areas, but that the numbers are high throughout the traditionally black residential areas. The number of shebeens is continuing to grow, in particular in informal settlements and inner city areas, but also, more recently, in "coloured" and Indian areas. The total number of shebeens in South Africa is probably somewhere between the Eskom OMNI Panel and Nielsen figures of 118 200 and 190 000, with continued growth taking the number towards the latter.

#### 2.1.3.6

With respect to liquor taverns, the ratios of unlicensed outlets highlight the degree of inappropriateness of current licensing legislation in South Africa today. Applicants experience a range of difficulties in obtaining a Special Liquor Tavern licence. The process of issuing licences by means of engaging lawyers is expensive. Applicants' legal fees are R5 000 and above. Almost all taverns are on residential premises. The Special Liquor Tavern licence requires substantial renovations to existing premises, typically costing R20 000 - R50 000. There is also the cost of the licence (sometimes included

in the legal fees), annual renewal and tax.

- 2.1.3.7 Running a licensed outlet also require management and training skills. Some suppliers have offered training in an attempt to ensure that taverns remained viable concerns and that the suppliers continue to receive payment for supplies.

## **2.2 A NEW APPROACH TO REGISTRATION**

### **2.2.1 General approach**

- 2.2.1.1 In order to promote economic empowerment, create sustainable jobs and promote small business development and competition, the liquor industry must be restructured. A very limited number of companies have virtual monopolies over the manufacture and distribution of all types of liquor in South Africa. Consistent with government's emerging approach to competition policy, new liquor legislation will require these assets to be unbundled in ways which will achieve the objective of economic empowerment of historically disadvantaged sectors of our society. This should apply especially to those traders who earn a living by trading in liquor, but who have been marginalised and criminalised in the past.

### **2.2.2 Types of registration**

- 2.2.2.1 Four types of registration will be provided for: manufacturers, wholesalers, retailers, and special events. A person holding an interest in any one type of registration may not acquire an interest in any of the other types of registration. The holder of any type of registration may sell all kinds of liquor on any day during hours determined by the local authority.
- 2.2.2.2 In addition, government will play a pro-active role in facilitating the unbundling process by:
- 2.2.2.2.1 detailing the criteria for ownership in each category;
  - 2.2.2.2.2 facilitating and co-ordinating access to finance; and

**2.2.2.2.3** facilitating the establishment of co-operative and other initiatives by new participants in the liquor distribution and retail sector.

**2.2.2.3** Increased manufacturing diversity is one of the likely outcomes of the shift in policy. This is common, given the role of new technologies and transportation innovations that across the world have opened up the manufacturing of liquor to many new market entrants. In the other countries, formerly concentrated beer markets have been enhanced by the introduction of hundreds of micro-breweries with distinctive brands. This process of diversification and industry deconcentration will be encouraged.

**2.2.2.4** More than half of the wholesale trade in liquor is carried out on a retail pricing basis, due to the unlicensed and illegal character of many retail purchasers. With legalisation of retail outlets, this will change. But wholesale distribution will also have to become far more competitive.

**2.2.2.5** Retail trading in liquor will be the greatest beneficiary of legalisation, registration and simplification of regulation. However, there will also be additional requirements associated with the role of communities in regulating retail activity in their area.



## CHAPTER THREE Socio-Economic Goals

### 3.1 INCORPORATING SOCIO-ECONOMIC GOALS

3.1.1 South Africa's first democratic government was tasked not only with transforming apartheid structures and systems, but with fundamentally changing the basis of the country's government so as to achieve objectives in an integrated way. As argued in the **Reconstruction and Development Programme**, "The RDP requires collaborative, integrated planning and decision-making."

3.1.2 The "long-term vision" established in the **Growth, Employment and Redistribution** strategy suggests that such integration must be enhanced, if we are to achieve the key objectives of social and economic policy:

*As South Africa moves toward the next century, we seek:*

- *a competitive fast-growing economy which creates sufficient jobs for all work seekers;*
- *a redistribution of income and opportunities in favour of the poor;*
- *a society in which sound health, education and other services are available to all; and*
- *an environment in which homes are secure and places of work are productive.*

3.1.3 In each of these objectives, liquor policy can play an important role, if the relationships between liquor and other "externalities" are firmly established. Very directly, the abuse of liquor has a detrimental affect upon employment and productivity, the distribution of income and opportunities, sound public health and security within the home and society at large.

3.1.4 Government has come to increasingly adopt a "polluter pays" approach to externalities. Too often, those who cause negative externalities are not provided with any direct incentives to alter behaviour. In order to address the externalities associated with liquor, it is proposed that a levy be applied to its manufacture and importation, and expenditure will be directly targeted to the low-income communities which are most severely affected by abuse of liquor. Further discussions follow concerning some of the specific externalities associated with liquor, including public health, social and religious considerations, women and youth, and transport.

## **3.2 PUBLIC HEALTH EXTERNALITIES**

### **3.2.1 Excessive alcohol consumption is associated with a range of severe health impacts:**

**3.2.1.1** Roughly a quarter to a third of all hospital admissions are directly or indirectly related to alcohol.

**3.2.1.2** Alcohol is associated with a wide range of medical conditions, including:

Cirrhosis of the liver;  
Cancers of the tongue, mouth, throat, larynx, oesophagus and liver;  
Central Nervous System impairments;  
Nutritional disorders;  
Cardiovascular abnormalities;  
Depression; and  
Increased susceptibility to diseases such as TB and pneumonia.

**3.2.1.3** Maternal alcohol consumption can lead to miscarriages, low birth weight infants, or Foetal Alcohol Syndrome, which includes mental and physical stunting and various physical deformities. In advanced industrial societies, Foetal Alcohol Syndrome is relatively rare, occurring in one out of every 750 children. This is roughly equal to Downs Syndrome, one child in 600. In South Africa, it is by far the commonest antenatal cause of mental and physical disability. Little comprehensive research has been done, but initial findings suggest a social problem of massive scale, with particularly high levels in the Western and Northern Cape provinces. It is likely that as many as one in every eight children in the poorer socio economic group in large parts of the Western Cape will be affected. The figure in many parts of the Northern Cape may be just as high.

## **3.3 SOCIAL AND RELIGIOUS CONSIDERATIONS**

### **3.3.1 Alcohol abuse results in a range of serious family and social effects:**

**3.3.1.1** Alcohol is a major factor in domestic violence. Research suggests that alcohol and drugs are the main factor in the majority of cases in which women in South African communities are abused by their spouses.

3.3.1.2 Excessive drinking is also associated with child abuse.

3.3.2 There is a strong relationship between alcohol and a wide range of criminal activity. Lack of jobs and poor living conditions together with alcohol and drugs, are causative factors in the majority of crimes. In parts of the country, in excess of 80% of all assaults and murders are alcohol related in that either the assaulter or victim or both were under the influence of alcohol.

### **3.4 GENDER AND YOUTH**

3.4.1 Women suffer from alcohol in that they are often victims of alcohol related violence. There is also an increase in alcohol consumption amongst women, in particular in the lower socio-economic group.

3.4.2 There is a significant increase in the consumption of alcohol amongst youth. This sets in place high consumption patterns and related problems into adulthood. The reasons for increased consumption include high levels of unemployment as well as a lack of recreational facilities to cater for social needs.

### **3.5 TRANSPORT EXTERNALITIES**

3.5.1 Accidents on roads in South Africa cost R9 billion a year. At least 50% of these accidents are alcohol related, with intoxication on the part of either the driver or pedestrians.

### **3.6 ADDRESSING THE EXTERNALITIES**

3.6.1 The negative effects of alcohol can only ultimately be resolved on the successful implementation of the RDP, in which enough jobs are created and basic needs met. However, immediate solutions are required.

3.6.2 This liquor policy, the legislation flowing from it and other interventions will be guided by the need to decrease per capita consumption of alcohol and to encourage responsible alcohol consumption in order to counteract the negative health, social and economic effects of alcohol.

3.6.3 In particular, it will involve an integrated approach which cuts across departments and sectors as well as different tiers of government. Integration at a national level will in part take place through the proposed National Liquor Advisory Committee. This will bring



together representatives of government departments, community organisations, churches, unions and the liquor industry at a national level.

**3.6.4** Similar interaction will be required at provincial government, local authority and community levels. Local authorities and representative community organisations and forums should work together in ensuring that the way in which liquor is distributed and sold limits the negative externalities as well as in addressing the negative effects which have already occurred. Religious formations have played a key, and in some areas a solitary role in addressing the devastation caused by alcohol in their communities and must be encouraged to be integrally involved in these initiatives.

**3.6.5** Addressing the externalities involves addressing issues common to all sectors as well as sector specific issues, but particular interventions are required in relation to education, the "tot" system, rehabilitation and youth. These issues will be discussed next.

### **3.6.6 Education**

**3.6.6.1** There is a need for education at a range of levels. Firstly, there is a need for general education about the potentially harmful effects of alcohol by means of the media, schools, public health facilities, community organisations and other vehicles. Central to any education initiative is the goal of community empowerment to enable people to take control over their lives.

**3.6.6.2** There is also a need for the expansion of a comprehensive education programme for people within the liquor industry, in particular those who serve alcohol to the public. The programme will need to cater for the educational needs of both those in the formal industry as well as the informal sector. The informal sector will be brought into the formal sector on the introduction of new legislation for registration.

### **3.6.7 The "tot" system**

**3.6.7.1** In April 1996, the President called on the wine industry to use "their considerable influence to help eliminate once and for all the last remnants of the 'tot' system". A coherent inter-disciplinary approach must be developed to achieve this goal, taking into consideration

the complex nature of the problem, the need for social rehabilitation and the resources and personnel required.

### **3.6.8 Rehabilitating victims of alcohol abuse**

- 3.6.8.1** Extensive welfare programmes are required to meet the needs of both alcohol abusers and the victims of alcohol related domestic violence, rape assault and other crimes.

### **3.6.9 Youth**

- 3.6.9.1** The alcohol related effects on youth require urgent attention. Two key interventions in this regard are job creation initiatives and the provision of recreational facilities in communities across the country.

- 3.6.9.2** The above are some of the issues which need to be addressed. Other issues include an integrated approach to alcohol related accidents on public roads and an approach to ensure that advertising highlights the potentially harmful effects of alcohol.

- 3.6.9.3** The availability of adequate funding to address these issues is central to their successful implementation. The proposed levy or the securing of funds (on budget) by the Department of Trade and Industry (see chapter 4) are key mechanisms for generating the necessary funds.

## **CHAPTER FOUR**

### **Implementing Liquor Policy**

#### **4.1 IMPLEMENTATION : A NEW INSTITUTIONAL FRAMEWORK**

##### **4.1.1 New regulatory institutions**

- 4.1.1.1** Major changes will occur in the implementation of a new liquor policy. Two bodies will be created to perform the duties conferred upon them by the proposed new Liquor Act. The new bodies are a Provincial Liquor Authorities per province and a National Liquor Advisory Committee.
- 4.1.1.2** Provincial Liquor Authorities will process registration applications, keep records of registrations and appoint inspectors to ensure compliance with the act and impose penalties and instigate procedures against offenders.
- 4.1.1.3** The National Liquor Advisory Committee will advise on all liquor policy matters, notably socio-economic interventions in relation to education, rehabilitation and the provision of recreational facilities in historically disadvantaged communities.

##### **4.1.2 Provincial Liquor Authorities**

- 4.1.2.1** A Provincial Liquor Authority, to process all registration applications, will be established in each of the nine provinces. The Authority will have the power to:
  - 4.1.2.1.1** register all unopposed registration applications;
  - 4.1.2.1.2** grant or refuse opposed applications;
  - 4.1.2.1.3** view premises; and
  - 4.1.2.1.4** withdraw or suspend registrations.
- 4.1.2.2** Members of the public may approach the Provincial Liquor Authority with representations on the granting, inspecting, withdrawal or suspension of registrations.

**4.1.2.3** The Provincial Liquor Authority will be appointed by the MEC and will consist of:

**4.1.2.3.1** a chairperson in the employ of the state and with a qualification in law; and

**4.1.2.3.2** one community representative for each geographical subregion of the province (regional member), appointed on the basis of their knowledge and representativity of a particular area.

**4.1.2.4** The appointment of the regional members will take place through an open and transparent public process. Persons with an interest in the liquor trade may not be appointed as members of a Provincial Authority. The chairperson and two members shall form a quorum.

**4.1.2.5** The Minister and Member of the Executive Council will have the authority to appoint liquor inspectors. All inspectors must be designated peace officers in terms of the provision of Section 334 of the Criminal Procedure Act. Inspectors will have the powers to:

**4.1.2.5.1** enter any premises;

**4.1.2.5.2** ascertain compliance with the basic conditions stipulated in the Act;

**4.1.2.5.3** if offenses are committed an inspector can instigate a procedure which could lead to the suspension or withdrawal of the registration of the business; and

**4.1.2.5.4** submit reports to the Provincial Liquor Authority.

**4.1.2.6** The Provincial Liquor Authority will be responsible for keeping a record of:

**4.1.2.6.1** licensed traders;

**4.1.2.6.2** registrations granted;

**4.1.2.6.3** registrations refused; and

**4.1.2.6.4** registrations withdrawn/suspended.

- 4.1.2.7 The Provincial Liquor Authority must forward these statistics on a monthly basis to the Department of Trade and Industry which will be responsible for a central register.

#### **4.1.3 The National Liquor Advisory Committee**

- 4.1.3.1 A National Liquor Advisory Committee will be established to perform a policy advisory function. This Committee will consist of 18 members, who will be representative of:

4.1.3.1.1 the liquor industry (3);

4.1.3.1.2 Seven of the following Government Departments: Health, Welfare, Education, Transport, Safety and Security, Trade and Industry, Agriculture, Sport and Recreation, Public Works, Constitutional Development, Arts and Culture, Tourism, Finance (7);

4.1.3.1.3 community and civil organisations, including unions and churches (8).

- 4.1.3.2 The Minister will appoint members through an open and transparent public process.

- 4.1.3.3 The National Liquor Advisory Committee will meet at least twice a year to advise the Minister and MEC's on any matters referred to the Committee by the Minister or MEC's for consideration.

- 4.1.3.4 The Committee will need to play a key role in developing an approach to and monitoring socio-economic interventions. Its advice must be channelled to the relevant departments to ensure intersectoral collaboration.

- 4.1.3.5 The Committee will be funded by the proposed levy or from funds secured by the Department of Trade and Industry (see paragraph).

## **4.2 REGISTRATION PROCEDURES**

### **4.2.1 Registration objectives**

- 4.2.1.1** Registration procedures will be simple, speedy and affordable. Greater powers should be devolved to elected local authorities in consultation with representative community organisations to make decisions about the siting of liquor outlets and granting of liquor registrations. Community policing forums also have an important role to play in ensuring that liquor sale ordinances are properly enforced with regard to where and when alcohol is sold, and to whom.

### **4.2.2 Unopposed applications**

- 4.2.2.1** All unopposed applications will be processed by the Provincial Liquor Authority upon payment of a prescribed application fee. Registration will take place if a person:

**4.2.2.1.1** is a permanent resident or citizen of the Republic of South Africa;

**4.2.2.1.2** is not disqualified eg. by being a minor or having been charged with murder, rape, robbery, child abuse, any offence involving an element of dishonesty, assault, or trade in or are in possession of drugs;

**4.2.2.1.3** provides confirmation that the premises comply with minimum requirements of the local authority having jurisdiction in the area in which the premises are situated;

**4.2.2.1.4** provides confirmation that prior notice of the intention to register has been placed and maintained on the premises in a conspicuous place where it is clearly visible and legible to anyone in the immediate vicinity for the prescribed period prior to lodgement of the application and in a newspaper circulating in the area and if there are no newspapers, in three public buildings (if any) in the community concerned;



4.2.2.1.5 provides a sketch plan of the premises which also indicates that, where business will be conducted from residential premises, the business will be separated from the residential portion;

4.2.2.1.6 provides proof that the premises have been zoned or approved for the purpose of the proposed business. The aforementioned must be discussed with the National Department of Constitutional Development and Local Government, Provincial Departments of Local Government and the South African Local Government Association; and

4.2.2.1.7 provides proof that appropriate facilities exist if liquor is to be consumed on the premises.

4.2.2.2 If an applicant complies with all these conditions the business will be registered and a registration certificate will be issued upon payment of a registration fee.

4.2.2.3 The application form will be simple, providing for a limited number of questions and requiring certain documents to be submitted. It will contain an undertaking that the obligations relating to the conduct of the business will be complied with and also contain an affidavit by the applicant wherein he/she confirms that the information provided in the application is true and correct. Application forms will be made available at local authorities, magistrates, courts, libraries, etc.

4.2.2.4 An application for a special events registration shall be lodged with the Provincial Liquor Authority. If granted, a registration certificate will be issued upon payment of the prescribed fee.

#### **4.2.3 Opposed applications**

4.2.3.1 All applications which are opposed must be considered by the Provincial Liquor Authority upon payment of the prescribed application fee. The chairperson together with the member of the region where the application

originated and the member from any other region in the province shall consider the granting or refusal of the opposed applications.

- 4.2.3.2** The Provincial Liquor Authority will have the power to grant or refuse applications on the basis of only the information or documentation submitted or by hearing the parties concerned. This authority shall give applicants and objectors at least two weeks written notice of the hearing.

#### **4.2.4 Renewals**

- 4.2.4.1** All registrations must be renewed annually upon payment of the prescribed fees appropriate to the type of registration. In the case of an initial registration, the registration will not be renewed unless the holder can provide proof that the business has been registered:

- 4.2.4.1.1** for tax purposes within twelve months of the registration being granted; and
- 4.2.4.1.2** by the Office of the Registrar of Companies within twelve months of the registration being granted.

#### **4.2.5 Obligations of the registered person**

- 4.2.5.1** A registered person shall:

- 4.2.5.1.1** only employ persons above the age of 18, except where persons above the age of 16 are undergoing training in catering services;
- 4.2.5.1.2** display a notice on the premises that indicate that:
  - no liquor may be sold to any person under the age of 18 years or to intoxicated persons, and
  - the consumption of alcohol by a pregnant or breast feeding woman is dangerous to her baby;
- 4.2.5.1.3** undergo training and ensure that all employees receive training in order to facilitate the responsible selling of liquor;
- 4.2.5.1.4** in the case of a manufacturer of liquor, sell liquor only to a wholesaler of liquor; and
- 4.2.5.1.5** in the case of a wholesaler of liquor, only sell liquor to a holder of a retail liquor registration certificate.



### **4.3 OFFENCES AND PENALTIES**

#### **4.3.1 Offences**

It will be considered an offence, in terms of the Liquor Act, to:

- 4.3.1.1 sell liquor without a registration certificate;
- 4.3.1.2 sell liquor to persons under the age of 18 years;
- 4.3.1.3 falsely present him or herself to be over the age of 18 years;
- 4.3.1.4 fail to display a notice on the premises - or on a bottle label, in the case of manufacturers - that no liquor may be sold to any person under the age of 18 years or to intoxicated persons and that the consumption of alcohol by a pregnant or breast feeding woman is dangerous to her baby;
- 4.3.1.5 sell liquor to intoxicated persons;
- 4.3.1.6 supply liquor to a person as wages or remuneration or as a supplement thereof;
- 4.3.1.7 be drunk, violent or disorderly in premises which have been licensed or in public places;
- 4.3.1.8 enter into or being a party to a "tie"-agreement;
- 4.3.1.9 consume liquor on a road, street, lane or thoroughfare;
- 4.3.1.10 introduce or sell liquor on sports grounds; or
- 4.3.1.11 sell liquor from a vehicle.

#### **4.3.2 Penalties**

- 4.3.2.1 Appropriately harsh fines and imprisonment for the above offenses will be imposed. Possible avenues to appropriate the fines imposed, will be investigated by the Department of Trade and Industry. Should it be possible the funds thus generated will be utilised for the rehabilitation of alcoholics and awareness campaigns relating to alcohol abuse.

#### **4.4 FUNDING THE POLICY OPTION 1**

##### **4.4.1 The liquor levy**

**4.4.1.1** By all accounts, consumer expenditure on liquor is "regressive" in economic terms, in that the household budget impact affects poor persons the most. This is the case at the point of consumption - purchase of alcohol - as well as with regard to the costs of many of the other externalities discussed below.

**4.4.1.2** It is crucial that the proposed liquor levy be spent in a manner sensitive to the needs and interest of the low-income South Africans because of the disproportionate affect of liquor on them. It is suggested that the liquor levy should be introduced as high up the value-added chain as possible - at the point of manufacture and importation - and should be explicitly targeted at education and social programmes that will reach low-income South Africans.

**4.4.1.3** The details of such a levy are still to be developed. The collection of such a levy can be accomplished by using existing channels. No additional administrative expenses are anticipated with respect to collection.

**4.4.2.4** With respect to disbursement of the fund generated through the levy, several categories of expenditure will be specified and prioritised, including education programmes, recreational alternatives, rehabilitation of alcoholics and other appropriate users, and construction and maintenance of community facilities. In some cases, the levy will be applied through existing government departments at national, provincial and local levels (for example, the Departments of Health, Education and Public Works). In other cases, specific project proposals that demonstrate effective targeting to low-income communities will be considered by the administrators of the fund. In all cases, additional expenses associated with maintenance and monitoring/evaluation should be built into project proposals. There is hence likely to be a minor administrative cost associated with disbursement of the fund, not to exceed 2% of the fund itself. As this will come from within the fund, the liquor levy will not pose any additional expenses to the general fiscus.

**OPTION 2****4.4.2 Departmental Budget Item**

- 4.4.2.1 The second option open to the Department is to motivate for the creation of an on-budget line item to secure money to carry the operational costs of the National Liquor Advisory Committee and to ensure that money are channelled to education and social programmes that will reach low-income South Africans.

**4.4.3 General financial implications**

- 4.4.3.1 The implications of the new liquor policy will be revenue-enhancing or will provide cost-savings for the fiscus, and will provide a net benefit to society once the overall social and economic costs and benefits are factored.

**4.4.4 Economic benefits of the liquor industry**

- 4.4.4.1 The liquor industry has a number of economic positive impacts, including the following:

- 4.4.4.1.1 the state received nearly R2 billion in excise duty in 1994 on all alcohol sales (1,4% of the annual budget);
- 4.4.4.1.2 SAB alone paid R2 414,9 million rand in excise duty in 1996;
- 4.4.4.1.3 the state receives other taxes from the production, distribution and sale of alcohol; and
- 4.4.4.1.4 the liquor industry is also a significant source of employment as well as self employment.

- 4.4.4.2 SAB estimates that there were 367 000 beer related jobs in June 1995, including 9 000 in SAB's Beer Division, 14 000 in packaging, 20 000 in agriculture 95 000 in the formal retail sector and 229 000 in the informal retail sector. In the Western and Northern Cape, the wine industry is a significant generator of employment.

**4.4.5 Economic costs**

- 4.4.5.1 Alcohol abuse entails enormous costs to the public sector including:

- 4.4.5.1.1 health costs;

4.4.5.1.2 police, court and penal system costs; and

4.4.5.1.3 social welfare payments.

4.4.5.2 There has been very little research to quantify the negative effects of alcohol in monetary terms. SANCA has estimated that the negative effects amount to R5 billion a year, but it is likely that the real figure is far in excess of this estimate.

4.4.5.3 The Minister of Transport, Mac Maharaj, has estimated that accidents on roads in South Africa cost R9 billion a year. At least 50% of these accidents are alcohol related.

4.4.5.4 The economic burden on society resulting from alcohol abuse in various member states of the European Union has been estimated to be 2 - 3% of Gross National Product (GNP) per year on average, and as high as 5 - 6% in some countries. Researchers at the Medical Research Council of SA estimate that the economic costs associated with alcohol abuse in South Africa are in excess of 4% of GNP per year (R18,9 billion).

4.4.5.5 To the degree that the new liquor policy has the effect of reducing alcohol abuse, the costs associated with liquor will decrease, and net benefits will likely increase substantially.

#### **4.4.6 Costs of regulation**

4.4.6.1 In addition to overall social benefits, the new liquor policy will also have lower regulatory costs than the existing system. Presently, liquor licensing and enforcement activities are unnecessarily complex and contradictory, and have differential racial impacts. The new, more simple framework for registration, will ensure a more rapid and fair approach.

4.4.6.2 In addition, as noted, the proposed liquor levy (option 1) or Departmental budget (option 2) will pay for the activities of the National Liquor Advisory Committee, as well as for other educational and liquor abuse prevention activities.

## **CHAPTER FIVE**

### **Conclusion: The Way Forward**

#### **5.1 LIQUOR POLICY AND LEGISLATION**

5.1.1 This document serves to detail the Government's proposed liquor policy as well as outline the content of the proposed new liquor legislation. The legislation is the first part of a more thorough review of all legislation relating to liquor and must be enacted without delay in order to facilitate the necessary restructuring of the industry as soon as possible.

#### **5.2 TRANSITIONAL MEASURES**

5.2.1 To accommodate the provisions of the proposed new legislation, the following transitional measures will be provided for, namely:

- 5.2.1.1 the conversion of existing licences to the new types of registration provided for;
- 5.2.1.2 the phasing out of existing licences where the holder has an interest in more than one type of registration, in accordance with guidelines to be agreed upon with the industry; and
- 5.2.1.3 the phasing out of depots and the conversion thereof into wholesale registrations.

#### **5.3 CONCLUSION**

5.3.1 The preceding chapters have outlined the monopoly character of the formal liquor industry, the small scale survivalist nature of much of the informal sector and the racial division in the industry which largely coincides with the formal/informal divide.

5.3.2 The severe harmful effects of alcohol abuse on men, women, youth and unborn children in communities across the country have also been outlined.

5.3.3 This historical legacy needs to be addressed urgently. The document has stressed the need for new legislation to facilitate ease of entry into the liquor trade and address the racially based monopoly characteristics of the industry.

- 5.3.4** The document has also proposed institutional and funding mechanisms to assist the previously disadvantaged to become equal players in the industry as well as to address the negative health, social and economic effects of alcohol.
- 5.3.5** The proposals in this policy document will be widely circulated. The Department of Trade and Industry invites feedback from all interested parties on both the policy directives in this document as well as the proposals outlined for new liquor legislation. The Department of Trade and Industry is committed to a speedy implementation of the policy directives. The new legislation will be in the interest of creating opportunities for those who wish to participate in the industry and implementing an approach to alcohol which is in the interests of all citizens.

# **LIQUOR BILL**

## **DEPARTMENT OF TRADE AND INDUSTRY**



**BILL**

**TO REGULATE THE MANUFACTURE, DISTRIBUTION AND SALE OF LIQUOR; TO RESTRUCTURE THE LIQUOR INDUSTRY; TO FACILITATE THE ENTRY AND EMPOWERMENT OF NEW ENTRANTS; TO ADDRESS THE ECONOMIC AND SOCIAL COSTS OF EXCESSIVE ALCOHOL CONSUMPTION; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.**

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

**CHAPTER 1****INTRODUCTORY PROVISIONS****Definitions**

1. In this Act, unless the context indicates otherwise -

"beer" means the drink manufactured by the fermentation of a mash of malt, with or without cereals, flavoured with hops, or ale, stout or any other drink manufactured as or sold under the name of beer, ale or stout, if it contains more than one per cent by volume of alcohol, but does not include sorghum beer;

"controlling interest" means an interest as defined in section 1 of the Maintenance and Promotion of Competition Act, 1979 (Act 96 of 1979);

"inspector" means an inspector designated under section 18;

"liquor" means -

- (a) any liquor product as defined in section 1 of the Liquor Products Act, 1989; and
- (b) any beer or sorghum beer;

"Member of the Executive Council" means the Member of the Executive Council of a province designated by the Premier concerned to give effect to the provisions of this Act in that province;

"Minister" means the Minister of Trade and Industry;

"person" includes a trust;



"premises" includes a place or building or part of a building on any premises and a vehicle, aircraft or vessel which is mainly used by tourists;

"prescribed" means prescribed by regulation;

"Provincial liquor authority" means the body established by section 4 of the Act;

"registered premises" the premises in respect of which an application for registration has been granted;

"sell" includes exchange or keep, offer, display, deliver, supply or dispose of for sale, or authorize, direct or allow a sale;

"sorghum beer" means the drink generally known as sorghum beer and commonly manufactured from grain sorghum, millet or other grain;

**CHAPTER 2****REGISTRATION TO SELL LIQUOR**

**2. Application for registration.-** (1) Any person not disqualified in terms of section 8, may upon payment of the prescribed application fee apply to the Provincial liquor authority for registration to sell liquor.

(2) An applicant shall make written application, in duplicate, to the Provincial liquor authority and shall -

- (a) furnish in the said application such information as is solicited in subsection (3);
- (b) declare under oath or truly affirm that the obligations set out in Chapter 3 will be complied with; and
- (c) declare under oath or truly affirm at the end of the application that the information contained therein is true.

(3) An applicant shall -

- (a)
  - (i) in the case of a natural person, provide his/her full names and identity number and registration number with the Registrar of Companies;
  - (ii) in the case of a company or close corporation, provide its registration number with the Registrar of Companies;
- (b) be a permanent resident or citizen of the Republic of South Africa and provide the address at which the proposed business will be conducted: Provided that in the case of a vehicle, aircraft or vessel, the address at which the head office is situated shall be furnished;
- (c) state the category of registration required;
- (d) confirm in writing that he or she is not disqualified in terms of section 8 from being registered as such;

- (e) provide written confirmation from the local authority in whose area of jurisdiction the proposed premises is situated, that the premises concerned comply in all respects with the requirements of that authority;
- (f) submit a business plan in respect of the business concerned which indicates -
  - (aa) the number of clients he or she intends to serve;
  - (bb) the expected turnover of the proposed business; and
  - (cc) the expected gross and nett profit;
  - (dd) appropriate facilities if liquor is to be consumed on the premises;
- (g) provide conclusive proof that the proposed premises has been zoned for the purpose of the business concerned;
- (h) submit a plan of the premises where the proposed business is to be conducted: Provided that if the business is to be conducted from residential premises, the plan must indicate that the business is completely separated from the residential portion and that there is no direct means of communication between the two areas;
- (i) confirm in writing that -
  - (aa) a notice indicating the intention to register was placed in a newspaper circulating in the area 30 days preceding the date of application;
  - (bb) a notice indicating the intention to register was affixed to the outside of the proposed premises where it is a building or a part of a building or a vehicle or vessel or in every other case, a board was affixed to a pole firmly planted in the ground on the premises concerned, for a continuous period of 30 days

preceding the date of application, in a conspicuous place where it was clearly visible and legible to passersby;

- (j) provide conclusive proof that, where the premises is situated in the vicinity of a school or place of worship or in a residential area, two-thirds of the residents within a 500 m radius of the proposed premises indicated in writing that they had no objection to the proposed business.
- (4) An application in terms of this section for registration to sell liquor at a special event in terms of section 3(d) shall comply with the provisions of subsection (3) of this section; Provided that the provisions contained in subsection (3)(f)(g)(h), (i) and (j) shall not apply and on condition that the application states the nature and duration of the special event and meets any other requirement that the Provincial liquor authority may determine.

**3. Categories of registration.-** (1) There shall be the following categories of registration:

- (a) for the sale of liquor by the manufacturer thereof;
  - (b) for the sale of liquor by a wholesaler;
  - (c) for the retail sale of liquor; and
  - (d) for the sale of liquor at a special event.
- (2) Each registration referred to in subsection (1) shall be subject to annual renewal as prescribed.

**4. Institution of Provincial liquor authority.-** A separate Provincial liquor authority is hereby instituted for each province of the Republic of South Africa.

**5. Constitution of Provincial liquor authority.-** (1) A Provincial liquor authority shall consist of:

- (a) a chairperson in the employ of the state and with a qualification in law; and

- (b) one community representative for each geographical subregion of the province appointed on the basis of their knowledge and representivity of a particular area .
- (2) The appointment of the regional members shall take place through an open and transparent public process.
- (3) Persons with an interest in the liquor trade shall not be appointed as members of a Provincial liquor authority.
- (4) The chairperson and two members shall form a quorum.
- (5) Meetings of the Provincial liquor authority shall be convened by the chairperson.
- (6) The procedure at meetings shall be determined by the chairperson.

**6. Powers of Provincial liquor authority.-** A Provincial liquor authority shall have the power to:

- (a) consider, grant or refuse applications for registration;
- (b) withdraw or suspend registrations;
- (c) determine conditions applicable to registrations; and
- (d) perform such other functions as may be assigned to it in terms of this Act.

**7. Duty of Provincial liquor authority.-** (1) If an application complies with the provisions of sections 2(2), 2(3) and 2(4) and has not been objected to, the Provincial liquor authority shall grant the applicant registration to sell liquor.

- (2) (a) An application that has been objected to must be considered by the Provincial liquor authority.
- (b) Applicants and objectors shall be given at least two weeks written notice of the hearing.
- (3) The original application shall be retained by the Provincial liquor authority and the copy and a copy of Chapter 3 of this Act returned to the applicant.

- (4) Both the original and copy of the application shall reflect :-
- (a) that the applicant has upon payment of the prescribed registration fee been registered and the category of registration;
  - (b) that the applicant has been given a serial number;
  - (c) that the application has been signed by a person of at least the rank of Assistant Director;
  - (d) any conditions determined by the Provincial liquor authority.
- (5) If an application in terms of subsection (1) or (2) is granted in respect of premises not yet erected or premises requiring any structural alteration or reconstruction so as to make it suitable for the purposes for which it will be used, the Provincial liquor authority shall nevertheless register the applicant on condition that, within a period stipulated by the Provincial liquor authority, an inspector certifies that the premises has been completed as indicated on the plan.
- (6) Such officers and employees as are required for the proper performance of a Provincial liquor authority's functions shall be designated by the head of the provincial department responsible for liquor affairs.

**8. Disqualification.-** (1) The Provincial liquor authority shall not register a person -

- (a) who is a minor on the date of registration;
- (b) who has in the Republic or elsewhere in the three years preceding the registration, been convicted of assault, rape, murder, robbery, trade in or possession of drugs, child abuse or any offence involving dishonesty or an offence in terms of this Act;
- (c) as a retailer of liquor if such person also sells liquor manufactured by him/her or is a wholesaler of liquor;
- (d) as a wholesaler of liquor if such person also sells liquor manufactured by him/her or is a retailer of liquor;
- (e) as a manufacturer of liquor if such a person is also a wholesaler or a retailer of liquor: Provided that the provisions of this subsection shall not apply to a person or an association of



persons who sells wine manufactured from grapes produced on land owned or lawfully occupied by him/her or any member of the association and the wine is sold on such land.

**2. If a person who is in terms of subsection (1) disqualified from being registered: -**

- (a) has a controlling interest in a company, close corporation or trust;
- (b) is a partner in a partnership; or
- (c) is the main beneficiary under a trust;

such a company, corporation, partnership or trust, shall not be registered.

**9. Records.- Every Provincial liquor authority shall -**

- (a) keep a record of every person registered to deal in liquor and which shall at least reflect the following information -

- (i) in the case of a natural person, his/her full names and identity number and registration number with the Registrar of Companies;
- (ii) in the case of a company or close corporation its registration number with the Registrar of Companies;
- (iii) the address at which the proposed business will be conducted: Provided that in the case of a vehicle, aircraft or vessel, the address at which the head office is situated shall be provided;
- (iv) the category of registration;

- (b) at the end of every month, forward to the Department of Trade and Industry a list, containing the particulars set out in subparagraph (a) above, of all registrations which had taken place, those whose registrations have been refused and those which have been withdrawn or suspended.

**CHAPTER 3****OBLIGATIONS APPLICABLE TO REGISTERED PERSONS**

**10. Juveniles and intoxicated persons.-** A person registered to sell liquor shall not sell or supply liquor on the premises -

- (a) to any person who is under the age of 18 years;
- (b) to an intoxicated person.

**11. Employees.-** (1) A person registered to sell liquor shall not in or in connection with the sale or supply of liquor, employ any person -

- (a) who is under the age of 18 years; or
  - (b) who, to his or her knowledge, has within the preceding three years been convicted of a contravention of any law governing the sale of liquor.
- (2) Subsection (1) shall not apply -

- (a) 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 in connection with the management of the business; or
- (b) to a member of the family of the registered person or of the manager of the business.

**12. Place of sale, supply and storage of liquor.-** Any person registered to sell liquor shall -

- (a) only sell, supply and store his/her liquor in those parts of the premises clearly intended for that purpose and indicated as such on the plan which accompanied his or her application;
- (b) during the hours when the sale of liquor is not permitted (if applicable), store his/her liquor in such a place on the registered premises or in such a manner as to render it inaccessible to the public.

**13. Prohibition on the sale of liquor for consumption on the premises.-** Any person who is registered -

- (a) to sell liquor manufactured by him or her; or
- (b) for the sale of liquor by a wholesaler,

shall only sell or supply liquor for consumption off the premises: Provided that the provisions of this subsection shall not apply to a person or an association of persons who sells wine manufactured from grapes produced on land owned or lawfully occupied by him/her or any member of the association and the wine is sold on such land.

**14. Persons to whom liquor may be sold.-** Subject to the provisions of section 8(1)(e), any person who is registered -

- (a) to sell liquor manufactured by him or her; or
- (b) for the sale of liquor by a wholesaler,

shall only sell or supply liquor to a person who is registered in terms of this Act to sell liquor.

**15. Delivery of liquor.-** A person registered to sell liquor shall not-

- (a) deliver any liquor from or by any vehicle or other receptacle or induce any person to do so, unless, before the despatch of the liquor, that liquor was ordered and an invoice was made out in respect of the order, the original of which shall be retained on the premises from which the liquor is despatched;
- (b) convey liquor for delivery in any vehicle or other receptacle unless he or she retains a copy of the invoice, contemplated in paragraph (a), in respect of that liquor in that vehicle or receptacle;
- (c) deliver liquor to an address not given in that invoice.

**16. Notices.-** A person registered to sell liquor shall keep and maintain on the premises a notice, in at least two of the official languages of which one shall be English, in a conspicuous place, which is clearly legible to customers that -

- (a) it is an offence to sell liquor to persons under the age of 18 years and to intoxicated persons;
- (b) the consumption of alcohol by a pregnant or breast feeding woman may be detrimental to her or the baby's lives.

**17. Days and hours of sale of liquor.- A person registered to sell liquor -**

- (a) may, notwithstanding any law to the contrary, sell liquor on any day of the week;**
- (b) shall only sell liquor during the hours which the local authority, in whose area of jurisdiction the premises is situated, may in its sole discretion determine.**

**CHAPTER 4****INSPECTORATE**

**18. Designation of Inspectors.-** (1) The Minister and Member of the Executive Council may designate any person or persons in the employ of the State as an inspector for the purposes of this Act.

(2) A person designated in terms of subsection (1) shall have the powers and perform the duties conferred upon him or her in respect of premises situated in the area of jurisdiction of the Member of the Executive Council concerned and in the case of a designation by the Minister, the Republic of South Africa.

(3) A person shall not be designated as an inspector in terms of subsection (1) unless such person has by virtue of the provisions of section 334(1)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) been declared a peace officer.

(4) An inspector shall be provided with a certificate, signed by the Minister or in the case of a designation by the Member of the Executive Council, by him/her, declaring that he or she has been designated as an inspector for the purposes of this Act.

**19. Reports by inspectors.-** An inspector shall, as soon as possible after the fact concerned has come to his or her notice, submit to the Provincial liquor authority a report -

- (a) on any failure by a registered person to discharge an obligation set out in Chapter 3;
- (b) if he or she is of the opinion that alterations or repairs ought to be effected to the premises of a registered person;
- (c) on any other matter which in the opinion of that officer ought to be brought to the notice of the Provincial liquor authority.

**20. Powers of inspectors.-** (1) An inspector may in the performance of his or her functions -

- (a) at all reasonable times enter any premises, and, after having informed the person who is then in charge of the premises of the purpose of his or her visit, make such investigation and enquiry as he or she may think necessary;
- (b) either alone or in the presence of any other person, as he or

she may think fit, question a registered person or any person in charge of the business or the manager thereof or person who has made an application for registration or any employee of the registered person whom he or she finds on the premises of the business;

- (c) order any person contemplated in paragraph (b) to appear before him or her at a time and place fixed by the inspector, and at that time and place question that person with regard to any matter which he or she is investigating;
- (d) perform those functions conferred upon him or her by sections 40(1)(a), 44 and 56 (read with section 57(5) and (6) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)).

(2) Any person who is in charge of any premises contemplated in subsection (1) shall at all reasonable times while an inspector is on those premises or in that place render such assistance as may be required by an inspector in the exercise of his or her powers.

(3) If an inspector is satisfied from information on oath or from personal observation that the fact that -

- (a) liquor is being sold by a person registered in terms of this Act gives rise to circumstances on or near those premises which probably warrant the suspension or withdrawal of the registration;
- (b) a person registered in terms of this Act failed to discharge an obligation set out in Chapter 3;

he or she may make representations to the Provincial liquor authority regarding the suspension or withdrawal of the registration concerned.



**CHAPTER 5****NATIONAL LIQUOR ADVISORY COMMITTEE**

**21. Institution of a National Liquor Advisory Committee.-** A National Liquor Advisory Committee is hereby instituted for the Republic of South Africa.

**22. Composition of National Liquor Advisory Committee.-** (1) The Committee shall consist of -

- (a) three members from the liquor industry;
  - (b) seven members from Government Departments to be selected from the Department of Health, Welfare, Education, Transport, Safety and Security, Trade and Industry, Agriculture, Sport and Recreation, Public Works, Constitutional Development, Arts and Culture, Tourism or Finance;
  - (c) eight members from community and civil organisations, including unions and churches.
- (2) The Minister will appoint members through an open and transparent public process.
- (3) If there are sound reasons for doing so the Minister may at any time remove from office any member appointed under subsection (1).

**23. Meetings of the National Liquor Advisory Committee.-** (1) Meetings of the Committee shall be convened by the Minister.

- (2) The members of the Committee shall elect a chairperson and the chairperson shall determine the proceedings at each meeting.
- (3) The Chairperson and six members of the Committee shall constitute a quorum for a meeting of the Committee.
- (4) Meetings of the Committee shall be convened for the consideration of the matters referred to in section 24.
- (5) If the Chairperson is of the opinion that a particular person is able to assist the committee in the consideration of a particular matter, he/she may co-opt that person for that purpose.
- (6) A decision of the Committee shall be taken by a majority of votes of the members present at a meeting, and in the event of an equality of

votes on any matter, the chairperson shall have a casting vote in addition to his/her deliberative vote.

**24. Functions of the National Liquor Advisory Committee.-** The Committee shall advise the Minister or Member of the Executive Council on any matter referred to the Committee by the Minister or Member concerned for consideration and arising from the application of this Act or relating to the distribution, or control over the distribution of liquor or the socio-economic implications relating to the use or abuse of liquor.

**25. Remuneration .-** If any person appointed in terms of this Act is not in the employ of the State, he or she will be entitled to such remuneration and allowances in connection with the performance of his or her duties in terms of this Act as the Minister may in consultation with the Minister of Finance determine.

## CHAPTER 6

### OFFENCES AND PENALTIES

**26. Offences regarding liquor trade.-** (1) Any person who enters into or is a party to a tie, shall be guilty of an offence.

(2) In the application of this section, "tie" means any agreement, understanding or condition whereby any person is directly or indirectly bound at any time -

- (a) to purchase liquor, whether together with any other article or not, from or through any person, whether to the exclusion wholly or partly of any other person or not;
- (b) to purchase or keep in stock liquor of a particular manufacturer;
- (c) not to purchase liquor from or through a particular person;
- (d) not to purchase or keep in stock liquor of a particular manufacturer.

**27. Offences in general.-** (1) Any person who -

- (a) sells any liquor otherwise than in terms of a registration;
- (b) is drunk, violent or disorderly on a registered premises;
- (c) is drunk in or on
  - (i) any road, street, lane, thoroughfare, square, park or market;
  - (ii) any shop, warehouse or public garage; or
  - (iii) any place of entertainment, cafe, 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);
- (d) consumes any liquor in 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;

(e) introduces, possesses or consumes any liquor on a sportsground or any part thereof, 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 sportsground concerned;

(f) falsely represents himself or herself or any other person to be over the age of 18 years in order to persuade the person registered, or his or her agent or employee, to sell or supply liquor to him or her or that other person; or

(g) supplies liquor to a person in his or her employ as wages or remuneration or as a supplement therefore,

shall be guilty of an offence.

**28. Offences regarding inspectors.- Any person who -**

(a) falsely holds himself or herself out to be an inspector;

(b) makes a relevant statement to an inspector which is false or misleading in any material respect, knowing it to be false or misleading;

(c) refuses or fails to comply to the best of his or her ability with any lawful demand, order or requirement of an inspector; or

(d) hinders or obstructs an inspector in the exercise of his or her powers,

shall be guilty of an offence.

**29. Offences by registered persons in general.- A registered person who -**

(a) keeps the registered premises open for the sale, supply or consumption of liquor or sells or supplies any liquor at a time when the sale of liquor is not permitted by the local authority;

(b) sells, stores or supplies liquor in a place where the sale or supply of liquor is not permitted;

- (c) contravenes section 11;
- (d) contravenes section 10;
- (e) contravenes section 15;
- (f) contravenes section 16;
- (g) contravenes section 13;
- (h) contravenes section 14;

shall be guilty of an offence.

**30. Offences by persons selling liquor for on-consumption.-** A person selling liquor for on-consumption who -

- (a) allows drunkenness or licentious conduct on the registered premises; or
- (b) sells or supplies liquor to a person who is in a state of intoxication,

shall be guilty of an offence.

**31. Penalties.-** (1) Any person who is guilty of an offence in terms of this Act, shall on conviction be liable:-

- (a) in the case of an offence referred to in section 26 to a fine or to imprisonment for a period not exceeding 10 years;
  - (b) in the case of an offence referred to in section 27(1)(a); section 27(1)(f); section 27(1)(g); section 28; section 29(i); section 29(b); section 29 (c) ; section 29 (d); section 29 (e); section 29 (f); section 29(g) and section 29 (h), to a fine or to imprisonment not exceeding 5 years.
  - (c) in the case of an offence referred to in section 27(1)(b); section 27(1)(c); section 27(1)(d) and section 27(1)(e), to a fine or to imprisonment not exceeding 1 year.
- (2) Any person who is convicted of an offence contemplated in subsection (1) within a period of three years after he or she was convicted of any offence contemplated in that subsection, shall be liable to double the fine or imprisonment which may be imposed for that offence, or to both that fine and that imprisonment.

**32. Competency to impose penalties.-** Notwithstanding any law to the contrary, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

**33. Regulations.-** (1) The Minister may make regulations regarding :-

- (a) the payment of fees in respect of any application made in terms of this Act.
  - (b) the payment of fees in respect of registrations.
  - (c) the procedure with regard to the renewal of registrations and the payment of annual fees in respect of renewals;
  - (d) the duties of officers by virtue of this act;
  - (e) the form of notices, appointments, determinations and applications in terms of this Act.
  - (f) any matter which in terms of this act is required or permitted to be prescribed; and
  - (g) in general, any matter in respect of which he/she thinks it necessary or expedient to make regulations for achieving the objects of this Act, the generality of this paragraph not being limited by the preceding paragraphs.
- (2) A regulation made under this section may for a contravention thereof or failure to comply therewith, prescribe a penalty or a fine or imprisonment for a period not exceeding six months.
- (3) A regulation under this section regarding any fees or allowances shall be made in consultation with the Minister of Finance.



## CHAPTER 7

### TRANSITIONAL PROVISIONS

**34. Conversion of certain exemptions, licences and approvals.-** (1) Notwithstanding any law to the contrary, every exemption, licence or approval of the kind referred to in the first column of Schedule 1 and in force immediately before the date of commencement of this section shall as from that date be deemed to be a registration in the category referred to in the second column of the said Schedule.

(2) A notice issued under section 33 of the Liquor Act, 1989, in respect of an application for a licence referred to in the first column of Schedule 1 of this Act and in force immediately before the date of commencement of this section, shall as from that date be deemed to be a registration referred to in the second column of the said Schedule to which the provisions of section 7(5) of this Act shall apply *mutatis mutandis*.

**35. Producers and wholesalers.-** A producer as defined in section 31(2) of the Liquor Act, 1989 (Act No. 27 of 1989), and the holder of a wholesale liquor licence which became a registration to sell liquor for wholesale shall dispose of all his/her or its interests in the retail liquor trade within a period of 3 years after the commencement of this Act. A person who has been conducting business as both a producer as so defined and a wholesaler of liquor shall within the same period dispose of all his/her or its interests in the retail liquor trade and in either manufacturing or wholesale.

**36. Brewers' licences.-** The holder of a brewer's licence which became a registration for the sale of liquor by the manufacturer thereof, 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 manufacture and sale of beer and/or sorghum beer, within a period of 3 years after the commencement of this Act.

**37. Storing of liquor.-** Any determination made in terms of section 51(2) of the Liquor Act, 1989 (Act No. 27 of 1989) shall lapse on 31 December of the year in which this Act comes into operation and shall cease to be of any force and effect.

**38. Existing ties.-** Any consent granted to enter into a "tie" by virtue of the provisions of section 158(2) of the Liquor Act, 1989 (Act No. 27 of 1989) shall lapse on 31 December of the year following the year in which this Act comes into operation and shall cease to be of any force and effect.

**39. Pending cases in terms of Act 27 of 1989.-** Subject to the provisions of section 34 (conversion of notices), any application or matter received by a local authority in terms of the provisions of the Liquor Act, 1989 (Act No.

27 of 1989) before the commencement of this Act and not disposed of at such commencement, shall be disposed of by that local authority in terms of that Act as it existed immediately before the commencement of this Act.

**40. Repeal of Law .-** The Liquor Act, 1989 (Act No. 27 of 1989), is hereby repealed.

**41. Short title .-** This Act shall be called the Liquor Act, 1997, and shall come into operation on a date fixed by the President in the Gazette.

**SCHEDULE 1****EXEMPTIONS, LICENCES AND APPROVALS CONVERTED****SECTION 34**

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Kind of exemption, licence or approval in force immediately before the date of commencement of section 34 of this Act.

Category of registration deemed to be in force as from that date.

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An exemption referred to in section 4(1) of the Liquor Act, 1989

A registration for the retail sale of liquor

A hotel liquor licence referred to in section 20(a)(i) of the Liquor Act, 1989

A registration for the retail sale of liquor

A restaurant liquor licence referred to in section 20(a)(ii) of the Liquor Act, 1989

A registration for the retail sale of liquor

A wine-house licence referred to in section 20(a)(iii) of the Liquor Act, 1989

A registration for the retail sale of liquor

A theatre liquor licence referred to in section 20(a)(iv) of the Liquor Act, 1989

A registration for the retail sale of liquor

A club liquor licence referred to in section 20(a)(v) of the Liquor Act, 1989

A registration for the retail sale of liquor

A sorghum beer licence referred to in section 20(a)(vi) of the Liquor Act, 1989

A registration for the retail sale of liquor

A special liquor licence referred to in section 20(vii) of the Liquor Act, 1989

A registration for the retail sale of liquor

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

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

A wholesale liquor licence referred to in section 20(b)(i) of the Liquor Act, 1989

A registration for the sale of liquor by a wholesaler

A brewers licence referred to in section 20(b)(ii) of the Liquor Act, 1989

A registration for the sale of liquor by the manufacturer thereof

A liquor store licence referred to in section 20(b)(iii) of the Liquor Act, 1989

A registration for the retail sale of liquor

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

A wine farmer's licence referred to in section 20(b)(v) of the Liquor Act, 1989

A registration for the sale of liquor by the manufacturer thereof

A sorghum beer brewer's licence referred to in section 20(b)(vi) of the Liquor Act, 1989

A registration for the sale of liquor by the manufacturer thereof

A sorghum beer licence referred to in section 20(b)(vii) of the Liquor Act, 1989

A registration for the retail sale of liquor

A special licence referred to in section 20(b)(viii) of the Liquor Act, 1989

A registration for the sale of liquor by the manufacturer thereof

A producer's licence referred to in section 20(b)(ix) of the Liquor Act, 1989

A registration for the sale of liquor by the manufacturer thereof

An approval granted in terms of section 60 of the Liquor Act, 1989 to the holder of a wine-house licence

A registration for the retail sale of liquor

A sportsground liquor licence referred to in section 189 of the Liquor Act, 1989

A registration for the retail sale of liquor



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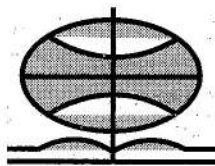
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