



# Notebook on the Liquor Act

(Act No. 59 of 2003) with regulations

### Overview

The Liquor Act, 2003 (Act No. 59 of 2003) came into effect on 13 August 2004. Before proclamation, provincial liquor authorities were responsible for the regulation of all the value chain categories of the liquor industry. The Liquor Act provides for: establishing national norms and standards in order to maintain economic unity within the liquor industry; essential national standards and minimum standards required for the rendering of services; measures to promote cooperative government in the area of liquor regulation; and matters connected therewith.

### Aims

The objectives of the Liquor Act are:

- To reduce the socioeconomic and other costs of alcohol abuse by
  - setting essential national norms and standards in the liquor industry;

- regulating the manufacture and wholesale distribution of liquor;
  - setting essential national norms and standards for the regulation of the retail sale and micro-manufacture of liquor; and
  - providing for public participation in the consideration of applications for registration.
- To promote the development of a responsible and sustainable liquor industry in a manner that facilitates
    - the entry of new participants into the industry;
    - diversity of ownership in the industry; and
    - an ethos of social responsibility in the industry.

### The Liquor Act applies to:

- All manufacturing and distribution of liquor or methylated spirits, and to the regulation of impotable substances within the South Africa.

### Regulation of manufacture and distribution of liquor

- The Minister of Trade and Industry must regulate the manufacture and distribution of liquor in accordance with the Liquor Act.
- A person must not manufacture or distribute liquor, except to the extent that the person is permitted to do so in terms of the Liquor Act.
- Subject to the conditions of its registration, a manufacturer may:
  - manufacture liquor; and
  - distribute the liquor that it has manufactured
    - i. to another manufacturer or to a distributor; and
    - ii. to a retail seller, if and to the extent permitted by the conditions of registration.

- Subject to the conditions of registration, a distributor may distribute liquor.
- Subject to the conditions of registration or licence, micro-manufacturer may:
  - manufacture liquor in a volume not exceeding the prescribed threshold volume; and
  - distribute the liquor that it has manufactured to
    - i. another manufacturer or to a distributor; and
    - ii. to a retail seller, if and to the extent permitted by the conditions of registration.
- In addition, to any authority granted in terms of applicable provincial legislation, a retail seller may:
  - purchase or otherwise acquire liquor other than by manufacturing it; and
  - sell or otherwise dispose of liquor as a return of stock to a manufacturer or distributor.

- 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 the Liquor Act merely because the purchaser of that liquor is a registered person.
- Sale of liquor by a retail seller to any person, whether registered or unregistered, constitutes distribution for the purposes of the Liquor Act if the retail seller:
  - knew that the purchaser intended to resell that liquor; or
  - 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
  - whether the retail seller knew the purchaser was a registered person, if applicable

- i. the nature of any delivery instructions given by the purchaser;
  - ii. any request by the purchaser to establish a discounted pricing arrangement, or a standing arrangement for ordering, billing, credit or payment; and
  - iii. any request or instructions by the purchaser to receive liquor and transship that liquor to the purchaser or a third party.
- 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.
- The Minister of Trade and Industry, by notice in the Gazette, must prescribe:
  - a threshold volume of liquor contemplated in subsection (5) (a); or

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

### Regulation of methylated spirits

- A person must not manufacture or distribute methylated spirits except in accordance with the Liquor Act.
- The Minister of Trade and Industry may make regulations:
  - declaring any substance to be methylated spirits;
  - restricting and regulating the importation, manufacture, distribution, conveyance, keeping or use of methylated spirits;
  - restricting or prohibiting the purchase or possession of methylated spirits;
  - concerning the denaturation, odourisation, colouring and the rendering impotable of methylated spirits sold or kept for sale;
  - prescribing the categories and qualifications of persons who may sell methylated spirits to the public;



- prescribing the maximum quantities of methylated spirits that may be sold on to any person; and
- 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**

- A person must not manufacture, sell or supply any substance under the name of any liquor or methylated spirits if that substance is not liquor or methylated spirits, respectively, as defined in the Liquor Act.
- A person must not manufacture, sell or supply as liquor any impotable substance, add an impotable substance to liquor, or sell or supply any liquor to which an impotable substance has been added.

### Registered activities from registered premises

- A registrant may carry out its registered activities only in or from registered premises and in accordance with the regulation or any applicable conditions of registration.
- A registrant may store liquor only on registered premises and in accordance with the regulations or any applicable conditions of registration.

### Prohibitions regarding employment in the liquor industry

- A registered person must not employ a person who has not yet attained the legal age 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).
- An employer must not:
  - supply liquor or methylated spirits to any person as an inducement to employment;

- supply liquor or methylated spirits to an employee as or in lieu of wages or remuneration; or
- deduct from an employees' wages or remuneration any amount relating to the cost of liquor or methylated spirits;
- supplied to the employee or to a person on behalf of the employee; or
- purchased by, or on behalf of, the employee.

### **Advertising restrictions**

- A person must not advertise any liquor or methylated spirits:
  - in a false or misleading manner;
  - in a manner intended to target or attract minors; or
  - any substance that is prohibited in terms of the Liquor Act.
- 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 the Liquor Act.

### Prohibition of the supply of liquor or methylated spirits to minors

- A person must not sell or supply liquor or methylated spirits to a minor.
- A person must take reasonable measures to determine accurately whether or not a person is a minor before selling or supplying liquor or methylated spirits to that person.
- 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/her.
- A person must not make a false claim about the age of a minor in order to induce a person to sell or supply liquor or methylated spirits to the minor.
- A minor must not produce liquor, import liquor or supply liquor to any other person.

## Registration as manufacturer and distributor

### Categories of registration and qualifications

- A qualified person, including any registered person:
  - may apply to the Minister of Trade and Industry, in the prescribed manner and form, to be registered as a manufacturer or distributor of liquor, or both; and
  - must indicate clearly in the application the extent to which it wishes to distribute liquor.
- Any person may be registered as a manufacturer or distributor of liquor, or both, except a person who:
  - is a minor at the date of submitting the application for registration;
  - is an unrehabilitated insolvent;
  - at the time of application is committed in terms of the Mental Health Act, 1973 (Act No. 18 of 1973);

- has been convicted of a contravention of the Liquor Act within the three years immediately preceding the date of application; or
- has been convicted, under applicable legislation, of an offence the elements of which are inconsistent with the objects and purposes of the Liquor Act, at any time
  - i. after the coming into operation of the Liquor Act; and
  - ii. within the three years immediately preceding the date of application.

### **Determination of application**

- The Minister of Trade and Industry may:
  - require further information relevant to an application; and
  - refuse an application if the applicant has not supplied any information required in terms of paragraph (a) within the prescribed time.

- If an applicant complies with the provisions of the Liquor Act, the Minister of Trade and Industry, after considering the application, must either:
  - register the applicant, subject to Section 13; or
  - refuse to register the applicant if the applicant is disqualified in terms of Section 11 (2); and
  - if the Minister of Trade and Industry refuses an application, the minister must give the applicant written reasons for the decision.

### **Conditions of registration**

- If the Minister of Trade and Industry is required to register an applicant in terms of Section 12, the minister must further consider the application, relating to the following criteria:
  - the commitments made by the applicant in terms of black economic empowerment;

- 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
- 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;
  - iv. efficiency of operation of the liquor industry;
  - v. exports; or
  - vi. competition within the liquor industry.
- Before proposing any conditions on a registration, the Minister of Trade and Industry may:
  - consult the Competition Commission when considering the matters set out in subsection (1)(c); and
  - publish a notice inviting public submission concerning the application.



- The Minister of Trade and Industry, having regard to the objects and purposes of the Liquor 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:
  - propose any reasonable and justifiable conditions on the registration of an applicant who seeks to be registered only as a distributor; or
  - propose any reasonable and justifiable conditions on the registration of any other applicant, including, but not limited to, conditions that determine whether, or the extent to which, the applicant may distribute liquor to retail sellers.
- 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 of Trade and Industry may propose a condition designed to prevent that person from exercising any decision-making authority with respect to the proposed registered activities.

- If the Minister of Trade and Industry proposes conditions on an applicant's registration, the minister must inform the applicant of the proposed conditions, and the reasons for them in writing.
- An applicant who has received a proposal of conditions may respond to the Minister of Trade and Industry within:
  - 30 days from the date on which the applicant is informed of the proposal; or
  - such longer period as the minister may permit, on good cause shown.
- If an applicant who has received a proposal of conditions:
  - consents to the conditions being imposed, the Minister of Trade and Industry must register the applicant, subject only to the conditions as proposed; or
  - 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.
- The Minister of Trade and Industry must:
  - inform an applicant in writing of a decision in terms of subsection (7); and
  - 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.

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

- Upon registering an applicant, the Minister of Trade and Industry must:
  - issue a prescribed certificate of registration to the applicant; and
  - enter the registration in the register.

- A valid certificate of registration, or a certified copy of it, is sufficient proof that the registrant is registered in terms of the Liquor Act.
- A registration:
  - takes effect on the date on which the certificate of registration is issued; and
  - remains in effect until
    - i. the registrant is deregistered; or
    - ii. the registration is cancelled in terms of the Liquor Act.
- A registrant must:
  - reflect its registered status and registration number on all of its trading documents;
  - comply with its conditions of registration and the provisions of the Liquor Act;
  - pay the prescribed annual renewal fees within the prescribed time;

- keep any records prescribed in terms of Section 42(1)(b) in the prescribed manner and form; and
- file any prescribed reports with the Minister of Trade and Industry in the prescribed manner and form.

### Transfer of registration

- The registration of a registrant may be transferred to another person if:
  - 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;
  - the person to whom the registration is to be transferred is not disqualified under Section 11(2); and
  - the Minister of Trade and Industry has considered the application and approved the transfer.

- If an application in terms of subsection (1) proposes a transfer of registration to:
  - an unregistered person, Section 12, read with the changes required by the context, applies to that application; or
  - a registered person, Section 12 and Section 13, read with the changes required by the context, apply to that application.
- If a registered person acquires control over another registered person who holds a different category of registration, the registered persons must notify the Minister of Trade and Industry in the prescribed manner and form.
- 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

- The Minister of Trade and Industry may reconsider, and vary the conditions of registration of any registrant, in any of the following circumstances:
  - if the registrant, after registration in terms of the Liquor Act, becomes registered or licensed as a micro-manufacturer or retail seller in terms of applicable provincial legislation;
  - if the registrant has notified the minister of a material alteration contemplated in subsection (3);
  - upon request by the registrant submitted to the minister in the prescribed manner and form; and
  - if at least five years have passed since the minister last reviewed or varied the conditions of registration in terms of this section.
- 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 Trade and Industry of that

application in the prescribed manner and form.

- A registrant must notify the Minister of Trade and Industry in the prescribed manner and form if it proposes to:
  - relocate any of the activities authorised under its certificate of registration; or
  - 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.
- Within 30 days after receiving a notice in terms of subsection (2) or subsection (3), the Minister of Trade and Industry must advise the registrant either that:
  - the minister will review the conditions of registration in light of the proposed changes; or
  - the minister accepts the proposed changes.
- If the Minister of Trade and Industry reviews conditions of registration in terms of this section:



- Section 13, read with the changes required by the context, applies to the review; and
- 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 subsection (1)(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 a registered person**

- For the purposes of this section, the expression "an administrator of an estate" includes:
  - an executor of a deceased estate;
  - a liquidator or trustee of an insolvent estate; and
  - a curator.

- 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 state:
  - continue to conduct the registered activities in the name of the estate; or
  - make a proposal to the Minister of Trade and Industry in terms of Section 15 to transfer the registration to another qualified person.
- Any person may apply in the prescribed manner and form to the Minister of Trade and Industry for the appointment of a person to conduct the registered activities of a registrant, pending the appointment of an administrator contemplated in subsection (2).
- Before granting an application made in terms of subsection (3), the Minister of Trade and Industry must be satisfied that:
  - every person with financial interest in the matter has been given reasonable notice of the application;
  - an administrator has not been appointed; and

- there are reasonable grounds for believing that an administrator will be appointed.
- 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.

### **Application, registration and renewal fees**

- The Minister of Trade and Industry may prescribe:
  - an application fee to be paid in connection with any application in terms of the Liquor Act
    - i. an initial registration fee to be paid upon registration; and
    - ii. an annual registration renewal fee to be paid by registrants.
- The Minister of Trade and Industry may prescribe different fees in terms of subsection (1) for different categories of applications or registrations.

### Conditions of licence

- In addition to the authority set out in Section 17, the Minister of Trade and Industry may review, and propose new conditions on, a registration if the registration:
  - with respect to a matter arising out of the registration of that person in terms of the Liquor 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);
    - 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)
- Has not met its commitments in terms of black economic empowerment, and cannot provide adequate reasons for failing to do so; or

- 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.
- Before imposing a condition in terms of subsection (1)(b) or subsection (1)(c), the Minister of Trade and Industry must provide the registrant with a reasonable opportunity to remedy the shortcoming in its conduct.
- Section 13, read with the changes required by the context, applies to a proposal by the Minister of Trade and Industry to impose conditions under this section.
- The Minister of Trade and Industry may propose new or alternative conditions under this section only to the extent that is reasonable and justifiable in the circumstances that gave rise to the review.

### Cancellation of registration

- A registration may be cancelled:
  - by the Minister of Trade and Industry in terms of subsection (2) or subsection (3);
  - voluntarily by the registrant, in terms of Section 21; or
  - as a consequence of sequestration, winding up or dissolution, in terms of Section 22.
- The Minister of Trade and Industry may cancel a registration if the registrant:
  - becomes disqualified on any of the grounds set out in Section 11(2);
  - does not comply with a condition of registration;
  - 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 Section 13(1)(b); or
  - does not comply with the provisions of the Liquor Act.

- In addition, to the authority set out in subsection (2), the Minister of Trade and Industry may cancel the registration of a registrant if the registrant:
  - 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
  - if it has objected
    - iii. failed to comply with the order of the minister given in terms of Section 32(2); or
    - iv. has not succeeded in any review or appeal against that order in terms of Section 33.
- If the Minister of Trade and Industry has cancelled a registration, the minister must notify the former registrant in writing of:
  - the cancellation;
  - the reasons for the cancellation; and
  - the date of cancellation.

- If a registration is cancelled in terms of this section, Section 21 or Section 22, the Minister of Trade and Industry must:
  - cancel the registration certificate; and
  - amend the register accordingly.
- A registration is cancelled as of the date on which the Minister of Trade and Industry notifies the former registrant of the cancellation, 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.

### **Voluntary cancellation**

- A registrant may cancel the registration by giving the Minister of Trade and Industry written notice in the prescribed manner and form:
  - stating the person's intention to voluntarily cancel the registration and reasons for doing so; and



- 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**

- If a registrant's estate is wound up or sequestered without having transferred the registration in terms of Section 15, the liquidator or trustee of that estate must notify the Minister of Trade and Industry 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.
- Upon receiving a notice in terms of subsection (1), the Minister of Trade and Industry must cancel the registration concerned.

### **National record of registrations**

- The Minister of Trade and Industry must establish and maintain a register in the prescribed form of all persons who have been registered under the Liquor Act or applicable provincial legislation, including those whose registration has been transferred, altered or cancelled.

- The Minister of Trade and Industry must:
  - permit any person to inspect the register established in terms of subsection (1), during normal business hours, and upon payment of the prescribed fee;
  - publish the register on a website; and
  - 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.
- Any person may:
  - inspect a copy of a registration certificate issued in terms of the Liquor Act; and
  - obtain a copy of it upon payment of the prescribed fee.

### Review or appeal of the Minister of Trade and Industry's decisions

- A decision of the Minister of Trade and Industry 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).

- In addition, to any other remedy available to a court conducting a review of a decision by the Minister of Trade and Industry 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 the Liquor Act, the circumstances of the application or review, as the case may be, and the provisions of Section 13.

## Compliance

### Designation of inspectors

- The Minister of Trade and Industry:
  - may designate any person as an inspector, with either general or specific authority to exercise powers in terms of the Liquor Act; and
  - Must issue to each inspector a certificate in the prescribed form stating that a person has been designated as an inspector.
- A valid certificate issued in terms of subsection (1)(b) is sufficient evidence of the authority of the inspector named on it;
- When exercising powers in terms of the Liquor Act, an inspector is a peace officer, as defined in Section 1 of the Criminal Procedure Act, 1997 (Act No. 51 of 1997), and may exercise the powers conferred on a peace officer by law.

## Functions of inspectors

- An inspector may:
  - investigate complaints submitted to the inspector in the prescribed manner and form; and
  - subject to the Liquor Act, or any other law that authorises the inspector to conduct an inspection
    - i. monitor and enforce compliance with the Liquor Act or that law; or
    - ii. conduct an inspection under the Liquor Act or that law.
- Subject to Section 28(3) and Section 30(3) and Section 30(5), and the provisions of any other law, an inspector may:
  - i. question any person whom the inspector believes may have information relevant to an inspection;
  - ii. question any person present on any premises being inspected, in respect of any matter which may be relevant to the inspection;
  - iii. inspect any document that

- a. a person is required to maintain in terms of the Liquor Act of any other relevant law; or
- b. may be relevant to any liquor-related inspection;
- iv. copy any document referred to in paragraph (c), or if necessary, remove the document in order to copy it;
- v. take samples of any substance that is relevant to the inspection
- vi. seize:
  - any liquor that appears to have been manufactured contrary to Section 4(2);
  - any liquor, if it appears that the liquor is being distributed contrary to Section 4(2);
  - any methylated spirits that appears to have been manufactured or sold contrary to the Liquor Act; or
  - any substance that appears to be prohibited in terms of Section 6

1. for the purpose of the of the inspection, take photos or make audiovisual recordings of anything or any person, process, action or condition implicated in the inspection on or regarding any premises; and
  2. do all things necessary for conducting the inspection.
- An inspector who:
    - 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
      - ii. secure the seized goods, pending a decision concerning forfeiture of those goods in terms of Section 35(2); or
    - removes anything from premises being inspected, must
      - i. issue a receipt for it to the owner of or person in control of the premises; and
      - ii. unless it is a substance contemplated in subsection (2)(e), return it as soon as practicable after achieving the purpose for which it was removed.

- 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.

### Entry of premises with a warrant

- An inspector may enter any premises if a magistrate has issued a warrant to do so in accordance with subsection (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:
  - the Liquor Act is not being complied with; and
  - the entry and inspection are necessary, in the interest of the public, to obtain information
    - i. that is related to the alleged failure to comply with the Liquor Act; and
    - ii. that cannot be obtained without entering those premises.



- A warrant in terms of subsection (2) may be issued at any time and must specifically:
  - identify the premises that may be entered and inspected; and
  - authorise the inspector to enter and inspect the premises and to do anything contemplated in Section 26.
- A warrant in terms of subsection (2) is valid until:
  - it is executed;
  - it is cancelled by the magistrate who issued it or, in that magistrate's absence, by a person with similar authority;
  - the purpose for which it was issued has fallen away; or
  - 90 days have elapsed since the date it was issued.
- Before commencing an inspection under a warrant, an inspector must:
  - if the owner of or a person in control of the premises is present
    - 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
- 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 a warrant

- An inspector who does not have a warrant may:
  - enter and inspect any premises with the consent of the owner or person in control of the land or those premises; or
- On a routine basis, enter and inspect any registered premises:
  - no more than six times during a 12-month period; or

- more frequently if permitted by any other law for the purpose of an inspection.
- In addition, to the entry permitted in terms of subsection (1), an inspector may enter any land or premises without a warrant:
  - if authorised to do so by any other law; or
  - 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.
- Before commencing an inspection on any land or premises in terms of this section, the inspector must:
  - provide identification to the owner or other person in charge of the premises;
  - explain to that person the authority by which the inspection is being conducted; and
  - show that person the inspector's certificate of designation.
- An entry and inspection without a warrant may be carried out only during normal hours of business.

### Use of force

- 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 breaking a lock, door or window of the land or premises to be entered.
- Before using force, the person executing the warrant must audibly demand admission and announce his/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 that is the object of the inspection.
- The Minister of Trade and Industry 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.
- 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 an inspector

- Any person who is in possession of a document relevant to an inspection must produce that document at the request of the inspector.
- 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 effectively.
- Before questioning a person in terms of this chapter, an inspector must inform that person of his/her applicable constitutional rights.
- A person who is questioned by an inspector in terms of this chapter must answer every question truthfully and to the best of his/her ability.
- An answer or explanation given to an inspector may not be used or admitted in criminal proceedings against the person who provides it, except in proceedings against that person on a charge relating to:

- the administration or taking of an oath;
- the making of false statements; or
- the failure to answer a lawful question fully and satisfactory.

### Compliance notice

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

- any penalty that may be imposed in terms of the Liquor Act if those steps are not taken.
- 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.
- If the requirements of a compliance notice have been satisfied, the inspector must issue a compliance certificate.

### Objection to compliance notice

- Any person issued with a compliance notice may object to it by making representations to the Minister of Trade and Industry within:
  - 21 days of receipt of that notice; or
  - such longer period as may be allowed by the minister on good cause shown.
- After considering any representations by the objector and any other relevant information, the Minister of Trade and Industry may

confirm, modify or cancel any compliance notice or any part of such notice.

- The Minister of Trade and Industry 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 the Liquor Act, any registered person affected by the notice.
- If the Minister of Trade and Industry 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.

### Review or appeal of the Minister of Trade and Industry's decisions

- A decision of the Minister of Trade and Industry 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).



## Offences and penalties

- It is an offence to:
  - contravene or fail to comply with Section 4(2), Section 5(1), Section 6, Section 7, Section 8, Section 9 or Section 10 or subsection (2); or
  - fail to comply with any condition of registration imposed under the Liquor Act
- A person must not:
  - refuse to grant an inspector access to premises to which the inspector is authorised to have access;
  - obstruct, interfere or hinder an inspector who is exercising a power or performing a duty in terms of the Liquor Act;
  - refuse to provide an inspector with a document or information that the person is lawfully required to provide in terms of the Liquor Act;
  - furnish false or misleading information to an inspector;

- 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 the Liquor Act;
- pretend to be
  - i. a registrant; or
  - ii. an inspector.
- falsify, or without authorisation, alter
  - 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;
- fail to comply with a compliance notice issued in terms of Chapter 4;
- enter any premises without a warrant in circumstances requiring a warrant;
- act contrary to a warrant issued in terms of Chapter 4;
- without authority enter or inspect premises; or

- disclose any information relating to the financial or business affairs of any person who was acquired in the exercise of any power or performance of any duty in terms of the Liquor Act, except
  - i. to a person who requires that information in order to exercise a power or perform a duty in terms of the Liquor 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**

- Any person who contravenes or fails to comply with a provision of:
  - Section 4(2), Section 5(1), Section 6, Section 8 or Section 10, is liable on conviction to a fine not exceeding R1 000 000, or to imprisonment for a period not exceeding five years; or

- Section 7, Section 9 or Section 34, is liable on conviction to a fine not exceeding R500 000, or to imprisonment for a period not exceeding one year.
- In addition, to imposing a penalty in terms of subsection (1), a court that has convicted a person of an offence:
  - 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);
  - in terms of Section 5, must order the forfeiture to the State of any methylated spirits manufactured or sold by that person contrary to the Liquor Act, and seized in terms of Section 26(2)(f); or
  - 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 Section 26(2)(f).

- The Minister of Trade and Industry must order that any liquor that is forfeited to the State in terms of this section must be:
  - destroyed at the cost of the person from whom it was seized;
  - or
  - sold to a registered person, in accordance with any law regulating the disposal of forfeited goods.

### **Imputation of criminal liability**

- If a manager, agent or employee of a 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 person, that 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 person:
  - either connived at or permitted the act or omission by the manager, agent or employee concerned; or

- did not take all reasonable steps to prevent the act or omission.
- 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.

### National Liquor Policy Council

#### Composition of the council

- The council consists of:
  - the Minister of Trade and Industry;
  - Members of the executive council responsible for liquor licensing for each province;
  - the Director-General of the Department of Trade, Industry and Competition, or other employee of the dtic designated by the director-general (have no vote on the council);
  - for each province, one person designated in terms of

applicable provincial legislation or by the member of the executive council responsible for liquor licensing in that province (have no vote on the council).

- the Minister of Trade and Industry chairs the council.

### **Functions of the council**

- The council is a forum for intergovernmental cooperation contemplated in Section 41(1)(h) of the Constitution;
- The functions of the council are to consult on:
  - national norms and standards for the liquor industry;
  - national policy in respect of the liquor industry;
  - liquor legislation core regulations, including the promotion of uniform national and provincial legislation in respect of liquor norms and standards;
  - any matter concerning the liquor industry within the national and provincial spheres of government;

- any matter concerning the management or monitoring of the liquor industry in South Africa, or licensing in any province;
- any other matter that may be referred to it by a member of the council;
- to promote and facilitate intergovernmental relations in respect of the liquor industry; and
- to facilitate the settlement of intergovernmental disputes concerning the liquor industry.

### Proceedings

- The Minister of Trade and Industry may convene a meeting of the council at any time, but must convene at least two meetings per financial year.
- The Minister of Trade and Industry may designate any meeting of the council to be a meeting of all members, or only of voting members.



- A non-voting member may nominate an alternative from its relevant regulatory authority to represent that member at a meeting of the council.
- The council may invite non-members to attend meetings of the council.
- As a body through which the national and provincial spheres of government seek to cooperate with one another in mutual trust and good faith, the council must attempt to reach its decisions by consensus.
- If the council fails to reach consensus on a decision, it may resolve the matter by formal vote on a motion.
- A motion in terms of subsection (6) passes only if it is supported by:
  - the Minister of Trade and Industry; and
  - at least five other voting members of the council.
- Subject to subsection (1) and subsection (7), the council may adopt its own rules for the conduct of its meetings.

### Public health considerations

- The Minister of Trade and Industry, 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:
  - registered premises; and
  - premises licensed or registered by a provincial authority to sell or micro-manufacture liquor.

### Power to issue regulations and notices

- In respect of any matter affecting the retail sale or micro-manufacture of liquor, the Minister of Trade and Industry, after consultation with the council, may make regulations in order to establish uniform norms and standards in the liquor industry regarding:
  - the form and nature of statistical information that provincial authorities must supply to the minister; and

- 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).
- The Minister of Trade and Industry may, by notice in the Gazette:
  - 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 im potable substance;  
or
    - ii. declaring any denatured, medicated, perfumed or otherwise treated spirits to be methylated spirits.
- Make any other regulations:
  - required or permitted in terms of the Liquor Act; or
  - necessary or expedient to prescribe in order to achieve the objectives of the Liquor Act.

### Procedure when issuing regulations

- Before the Minister of Trade and Industry may promulgate a regulation contemplated in Section 42 that materially and adversely affects any person, the minister must:
  - 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;
  - publish the regulation or notice in the Gazette and invite comment from the public; and
  - consider any comment received and any recommendations made by the council.
- 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.
- A decision of the Minister of Trade and Industry in terms of this chapter is subjected 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).

### **Delegation of power**

- The Minister of Trade and Industry may delegate all or part of any power of the minister in terms of the Liquor Act, other than the power to make regulations, to the Director-General of the Department of Trade and Industry or an officer of the national department responsible for liquor matters designated by the director-general.
- The Minister of Trade and Industry may delegate to a member of the executive council all or part of the minister's powers, discretion and responsibility under the Liquor Act, with respect to the registration of persons within a province as distributors of liquor.
- At any time, the Minister of Trade and Industry may revoke a delegation of power under this section, and exercise that power directly.

### Commencement

The Liquor Act comes into operation on a date to be determined by the President of South Africa by proclamation in the Gazette.



**the dtic** Campus

77 Meintjies Street

Sunnyside

Pretoria

0002

**the dtic**

Private Bag X84

Pretoria

0001

**the dtic** Customer Contact Centre: 0861 843 384

Website: [www.thedtic.gov.za](http://www.thedtic.gov.za)