

**[Act 2 of 2003]GAUTENG LIQUOR ACT 2 OF 2003**

[ASSENTED TO 8 JULY 2003] [DATE OF COMMENCEMENT: TO BE PROCLAIMED]

*(English text signed by the Premier)*

**as amended by**

Gauteng Liquor Amendment Act 9 of 2003

**ACT**

**To provide for the control of the retail sale and supply of liquor within the Gauteng Province; to establish the Gauteng Liquor Board, local committees and a Liquor Trade Association; to regulate applications for licences and to provide for public notification and participation, to regulate the granting of licences in respect of different kinds of licences; to prohibit the sale of liquor to certain categories of people; to provide for general matters such as enforcement procedures; and to provide for matters connected therewith.**

BE IT ENACTED by the Provincial Legislature of Gauteng, as follows:-

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**CHAPTER 1**  
**INTRODUCTORY PROVISIONS [sec 1]**

## 1 Definitions

In this Act, unless the context otherwise indicates -

**"bar"** means any open bar or any part of licensed premises exclusively or mainly used for the sale and consumption of liquor and shall include any counter or barrier across which drink is or can be served to the public;

**"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;

**"Board"** means the Gauteng Liquor Board established in terms of this Act;

**"chairperson"** means the chairperson of the Board, and also the deputy chairperson of the Board, or his or her alternate, when he or she is acting as chairperson;

**"controlling interest"** in relation to any business or undertaking, means any interest of whatever nature enabling the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities or assets of the business or undertaking and **"control"** has a corresponding meaning;

**"concoction"** means the product or drink manufactured by the fermentation of treacle, sugar or other substances by whatever name they are known.

**"dance hall"** means a place or institution engaged in formal dancing, dancing instruction and training;

**"Department"** means a department of the Provincial Government responsible for Economic Affairs;

**"exempted person"** means a person who has under sections 123 and 124 been exempted from the provisions and application of this Act;

**"financial interest"** means any such interest acquired in a business and directly or indirectly related to the fortunes, including the turn-over, of the business, but does not include such an interest which is not a controlling interest acquired in a public company, a co-operative society as defined in section 1 of the Wine and Spirit Control Act, 1970 (Act 47 of 1970), or a financial institution registered under the law regarding financial institutions;

**"gaming premises"** means a casino, bingo hall, betting hall, tattersalls or other premises licensed in terms of the Gauteng Gambling Act, 4 of 1995 or its successor or any relevant gaming and gambling legislation;

**"grant"** with regard to a licence or permit means the approval of an application by the Board prior to issue of the licence or permit;

**"Head of Department"** means the head of the department of the Provincial Government responsible for Economic Affairs;

**"hotel"** means premises, wherein or whereon the business of supplying lodging and meals for a reward is or is intended to be conducted, and includes a motel, inn, bed and breakfast, caravan and camping park, farmhouse, guest-house, a lodge, boatel boat and a house boat;

**"inspector"** means an inspector appointed in terms of this Act;

**"intoxicated and intoxicated condition"** each mean the condition a person is in when his or her capabilities are so impaired by liquor that he or she is likely to cause injury to himself or herself or be a danger or nuisance or disturbance to others;

**"issue"**, with regard to a licence or permit, includes the delivery or dispatch of the licence to the person to whom it has been granted or to his or her agent;

**"licence"** means a licence issued in terms of this Act;

**"licensee"** means a person or corporation named as a licensee in a licence or permit, including a person to whom a licence has been transferred;

**"licensed premises"** means premises in respect of which a licence has been issued and includes any building or other place attached to such premises;

**"liquor"** means a product of fermentation or distillation of grains, fruits or other agricultural products and includes synthetic ethyl alcohol and includes beer or sorghum beer, but does not include methylated spirit or medicine which is subject to registration by virtue of a resolution published in terms of section 14 (2) of the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965);

**"local committee"** a committee of the Board established for each area of a municipality in Gauteng, that is, a Metropolitan Council or District Council or as contemplated in section 155 of the Constitution of the Republic of south Africa, 1996 (Act 108 of 1996);

**"manufacturer"** means a person who produces liquor for sale;

**"meeting"** means a meeting of the Board or local committee and includes a hearing convened by the Board or local committee;

**"member"** means a member of the Board;



**"Member of the Executive Council"** means the Member of the Executive Council of the province responsible for Economic Affairs;

**"methylated spirit"** means spirit denatured in accordance with any law on the denaturation or methylation of spirit or any other denatured, medicated, perfumed or otherwise treated spirit declared to be methylated spirit under any other law;

**"micro-manufacturer"** means a producer of liquor who in a calendar year does not produce more than the prescribed volume;

**"minor"** means a person under the age of twenty-one (21) years;

**"night club licence"** means a licence that, subject to this Act and the conditions of the licence, authorises the licensee to sell liquor for consumption on the licensed premises and to provide for dancing and musical entertainment;

**"off-consumption licence"** means a license entitling the licensee to sell liquor for consumption only away from the licensed premises and **"off-consumption"** has a corresponding meaning;

**"on-consumption licence"** means a license entitling the licensee to sell liquor for consumption only on the licensed premises and **"on-consumption"** has a corresponding meaning;

**"permit"** means a catering or occasional permit issued in terms of this Act;

**"pool club"** means a place where members of a club or an organised league play for competition and for social purposes darts, pool, snooker and other similar games;

**"Province"** means the Gauteng Province;

**"premises"** includes a place or building or part of a building on any premises and a vehicle or vessel, unless the contrary intention appears from the context;

**"prescribe"** means prescribe by regulation;

**"pub"** means a place where liquor is sold for consumption together with snacks or light meals;

**"public place"** means any place to which the public have access as a right or by invitation, expressed or implied, and includes a vehicle in a public place;

**"regulation"** means a regulation made in terms of this Act;

**"restaurant"** means a premises at which meals are regularly supplied to guests;

**"restricted part"** means a bar on any licensed premises in respect of which an on-consumption licence has been issued, in which liquor is served over a counter and which does not form an integral part of a room where ordinary meals are taken continuously on a daily basis, and also any other part of such licensed premises which is to be treated as such in terms of any condition which has been imposed under this Act;

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

**"shebeen"** means any unlicensed operation whose main business is liquor and is selling less than ten (10) cases consisting of 12 x 750 ml of beer bottles.

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

**"sports ground"** means a place where public sports, games or recreations are regularly held;

**"supply"**, with regard to any liquor, means to place a person in possession or control of the liquor for consumption;

**"table wine"** means wine containing not more than 14 per cent by volume of alcohol;

**"tavern"** means a place whose main business is the supply of liquor, food and various forms of entertainment;

**"theatre"** means premises at which dramatic performances, plays, concerts or films are regularly presented or shown to the public; and

**"this Act"** includes regulations made in terms hereof.

## **CHAPTER 2**

### **THE LIQUOR BOARD [sec 2-22]**

#### **2 Establishment of the Board**

There is hereby established a juristic person to be known as the Gauteng Liquor Board

#### **3 Powers and functions of Board**

(1) The Board shall receive applications referred to in section 21 from the local committees and after considering such applications, refuse or grant the application concerned;

[Subsec (1) substituted by sec 1 of Act 9 of 2003 wef 16 January 2004.]

(2) The Board may, after the consideration by it of any other matter contemplated in this Act -

- (a) suspend for an indefinite time or for such period as it may determine or withdraw from such date as it may determine, a licence which is the subject of a report, complaint or objection concerned, or any right or privilege which is attached thereto;
- (b) declare the licence concerned to be subject to such conditions or further conditions as it may in its discretion impose;
- (c) rescind the suspension of the licence concerned or of any right or privilege which is attached thereto, with immediate effect or from such date as it may determine, subject to such conditions as it may in its discretion impose; or
- (d) take any such other steps as it may think fit;

(3) The Board may advise the Member of the Executive Council or furnish a report or recommendation to the Member of the Executive Council on any matter referred to the Board by the Member of the Executive Council for consideration and arising from the application of this Act or relating to the control over or distribution of liquor.

(4) The Board shall perform such other functions as may be assigned to it in terms of this Act.

(5) The Board may, with the concurrence of the Member of the Executive Council, establish a fund to be administered by it in addressing negative social effects of liquor consumption in the Province.

(6) The fund referred to in subsection (5) shall be dispensed by the Board on application by the affected parties or communities or as prescribed.

#### **4 Constitution of the Board**

(1) The Board shall consist of not less than six (6) and not more than nine (9) members, being fit and proper persons, appointed by the Member of the Executive Council, as follows:

- (a) one or more persons admitted as Attorney or Advocate with at least five years experience in the legal profession or administration of justice;
- (b) one or more representatives of the Department responsible for the administration of the Act;

- (c) one or more persons appointed by reason of his or her knowledge in the field of welfare or socio-economic development or social services; and
- (d) one or more persons appointed by reason of his or her knowledge or experience in the liquor industry and not actively involved therein nor having a financial interest, whether direct or indirect.

(2) Members of the Board may be appointed from officials in the employ of the State

(3) The Member of Executive Council shall appoint a member of the Board as the Chairperson, and another member as the Deputy Chairperson of the Board.

(4) No person shall be appointed as a member of the Board if such person -

- (a) is not a citizen of the Republic resident in the Province;
- (b) is an unrehabilitated insolvent;
- (c) is subject to an order of a court declaring such person to be mentally ill or disordered;
- (d) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering of a forged document, perjury, an offence under this Act or the Corruption Act, 94 of 1992, or any offence involving dishonesty;
- (e) has at any time been removed from an office of trust on account of misconduct; or
- (f) has a direct or indirect financial interest in any liquor business or is a spouse of such a person.

## **5 Terms of Office and Remuneration of Members**

(1) A member shall be appointed for a term not exceeding five (5) years and shall be eligible for reappointment at the lapse of the initial term.

(2) No person shall be reappointed as a member of the Board for more than two (2) terms.

(3) A member of the Board shall be paid such remuneration and allowances out of the funds of the Board as the Member of Executive Council may determine.

## **6 Recusal of a Member with Conflicting Interests**

(1) A member of the Board shall not vote, attend or in any other manner

participate in the proceedings at any meeting or hearing of the Board if, in relation to any matter before the Board -

- (a) he or she or his or her family member, partner or business associate is a director, member or partner of, or has a controlling interest or any financial or other interests in, the business of the applicant for a licence, registration, certification, grading or any other right or privilege to be granted by the Board; or
- (b) he or she has any interest which precludes him or her from performing his or her functions as a member of the Board in a fair, unbiased and proper manner; or

(2) If at any stage during the course of any proceedings before the Board it appears that a member has or may have any interests contemplated in subsection (1) -

- (a) that member shall forthwith and fully disclose the nature of his or her interest and leave the meeting or hearing so as to enable the remaining members to discuss the matter and determine whether that member is precluded from participating in the proceedings at such meeting or hearing by reasons of a conflict of interest; and
- (b) such disclosure and the decision taken by the remaining members regarding such determination, shall be recorded in the minutes of the proceedings in question.

## **7 Vacating of Office by Members of the Board**

(1) A Member of the Board shall vacate his or her office if he or she -

- (a) becomes subject to a disqualification contemplated in section 4(4);
- (b) has been absent from more than two consecutive meetings of the Board without leave of the Chairperson; or
- (c) fails to disclose any interest contemplated in section 6(1).

(2) The Member of the Executive Council may, after giving the member concerned an opportunity to be heard, terminate the membership of any member of the Board on good cause shown.

## **8 Meetings and Decisions of Board**

(1) The first meeting of the Board shall be held at a time and place determined by the Chairperson, and thereafter the Board shall meet at such times and places as it may from time to time determine for the expeditious conduct of its business.

(2) The Chairperson may at any time on notice convene an extraordinary meeting of the Board to be held at a time and place determined by him or her.

(3) No decision in terms of this Act relating to the granting, amendment, renewal, transfer, suspension or revocation of a licence shall be taken at an extraordinary meeting.

(4) The quorum for a meeting of the Board shall be a majority of its members.

(5) If both the Chairperson and Deputy Chairperson are absent from any meeting of the Board, the members present shall from among themselves elect a person to preside at such meeting.

(6) Each member present shall have one vote on any matter before the Board and, in the event of an equality of votes, the Chairperson shall have, in addition to a deliberative vote, a casting vote.

(7) No decision taken by or act performed under the delegation of the Board shall be invalid by reason only of a vacancy on the Board or, the fact that a member failed to disclose an interest as contemplated in section 6(1), or the fact that any person not entitled to sit as a member of the Board sat as such a member at the time when the decision was taken or the act was delegated, if the decision was taken or the act was delegated by the majority of the members of the Board who were present at the time and entitled to sit as members.

(8) Subject to the other provisions of this section, the Chairperson shall determine the procedure at the meeting.

(9) The Chairperson may, if he or she is satisfied that any person contemplated in section 10 (1) or (4) whose presence is required at the meeting, has been duly notified or summonsed to be present at the meeting but is not present at the meeting, direct that the meeting be held in the absence of that person.

(10) A decision of the Board shall be taken by a majority of votes of the members present at a meeting.

## **9 Minutes of the Board**

(1) Minutes of the proceedings of the Board shall be taken and be retained at the offices of the Board.

(2) Any person may obtain copies of the minutes contemplated in paragraph (a) or of any part thereof against payment of the prescribed fees.

## **10 Notices and summonses**

(1) The Chairperson may cause any person who is or may be affected by or is concerned in the consideration of a particular matter by the Board, to be notified in the prescribed manner to be present at any meeting, with notice to him or her of the date,

time and place of the meeting at which his or her presence is required and the relevant matter to be considered.

(2) A person who has received a notice in terms of subsection (1), shall personally appear before the Board on the date and at the time and place set out in the notice and may be represented by a person of his or her choice.

(3) The Chairperson may cause the inspector who has submitted a report contemplated in this Act to be notified of the meeting at which the report will be considered.

(4) The Chairperson may cause any person to be summonsed in the prescribed manner to be present at any meeting to -

- (a) give evidence; or
- (b) produce any document or any other thing which is in his or her possession or custody or under his or her control and which in the opinion of the Chairperson relates or may relate to a matter to be considered, with notice to him or her of the date, time and place of the meeting at which his or her presence is required.

(5) Any person present at a meeting, whether or not he or she has been notified or summonsed in terms of section 10 (1) or (4) or any provision of this Act to be present at the meeting, may -

- (a) be called upon by the Chairperson to give evidence; or
- (b) be ordered by the Chairperson to produce to the Board any document or any other thing, which is in his or her possession or custody or under his or her control, and be questioned by the Board.

(6) The Board may inspect, and retain for such period as is reasonable in its discretion, any document or any other thing produced to it.

(7) If the Board thinks it necessary, the Chairperson may require of any person called upon in terms of subsection (4) (a) to give evidence or ordered in terms of subsection (5) (b) to produce to the Board any document or any other thing, that he or she give evidence under oath or after the making of an affirmation.

(8) The Chairperson or a person designated by him or her for this purpose shall administer the oath or affirmation.

(9) A person appearing before the Board to give evidence or to produce any document or any other thing shall be entitled to any privilege to which a person appearing in criminal proceedings before the High Court is entitled.

(10) The Board may, in considering any application, of its own accord take cognisance of any matter which in its opinion may be a ground for an objection to the granting of the application.

(11) The Chairperson shall inform the applicant concerned of the matter contemplated in subsection (10) and shall, if the applicant so requests, postpone the consideration of the application for such period as the Chairperson may think fit so as to afford the applicant the opportunity of stating his or her case in connection therewith.

## **11 Accessibility of meetings**

(1) Subject to subsections (2) and (3), any meeting of the Board shall be accessible to the public.

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

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

## **12 Staff of the Board**

(1) The Board shall in the performance of its functions be assisted by a secretary, officers and employees placed at the disposal of the Board under the provisions of the Public Service Act, 103 of 1994.

(2) The secretary shall become an ex officio member of the Board and shall have no voting rights.

## **13 Committees to Assist the Board**

(1) (a) The Board may appoint at least two of its members and the secretary as an Executive Committee of the Board which shall have the power to perform such functions of the Board during the periods between meetings of the Board, subject to paragraphs (b), (c), and any other directions of the Board.

(b) Except in so far as the Board may direct otherwise, the Executive Committee shall not have the power to set aside or amend any decision of the Board.

(c) Any act performed or decision taken by the Executive Committee shall be of force and effect except in so far as is set aside or amended by the Board at its next meeting.

(2) (a) The Board may appoint one or more committees to inquire into any matter referred to it by the Board and to report on that matter to the Board.



(b) Such a committee shall consist of so many members of the Board or so many other persons, or so many members and other persons, as the Board may deem necessary and the Board may from time to time dissolve or reconstitute such a committee.

(3) Board shall appoint a member as the chairperson of such a committee.

(4) A member of a committee contemplated in (2)(a), shall receive such remuneration and allowance from the funds of the Board as it, after consultation with the Member of the Executive Council, may determine.

## **14 Expert and other assistance**

(1) The Board may appoint such experts or other persons as it may deem necessary with a view to assisting it in the exercise and performance of its powers, functions and duties.

(2) The terms, conditions, remuneration and allowance applicable to any expert or person appointed under subsection (1), and the work to be performed or services to be rendered shall be determined by the Board with the concurrence of the Member of the Executive Council, and be contained in a written agreement entered into for that purpose between the Board and the expert or person concerned.

(3) The experts or other persons appointed under subsection (1) will not be entitled to vote on any decision taken by the Board.

## **15 Delegations**

(1) The Board may, with the approval of the Member of the Executive Council and subject to the provisions of this section, delegate its powers, functions and duties to any member of the Board or any committee of the Board or any local committee of the Board, on such terms as the Board may determine.

[Subsec (1) substituted by sec 2 of Act 9 of 2003 wef 16 January 2004.]

(2) A delegation under this section may at any time be revoked or withdrawn.

(3) Any thing done in the exercise or performance of a delegated power, function or duty shall be deemed to have been done by the Board, as the case may be.

## **16 Funds of the Board**

(1) The funds of the Board shall consist of -

(a) money appropriated by the Provincial Legislature; and

(b) money accruing to the Board from any other source approved by the Member of

the Executive Council, including fees paid in terms of this Act.

(2) The Board shall, for the purposes of appropriations contemplated in subsection (1)(a), submit to the Member of the Executive Council such estimates of expenditure and other inputs in respect of budget matters, including a business plan, as the Member of the Executive or the Provincial Treasury may require.

## **17 Accounting Responsibility**

The accounting responsibilities of the Board shall be as prescribed in the Public Finance Management Act, 1999 (Act 1 of 1999).

## **18 Annual Report**

The annual reports and financial statements of the Board shall be prepared and submitted as required by the Public Finance Management Act, 1999 (Act 1 of 1999).

## **19 Establishment of local committees of the Board**

There is hereby established local committees of the Board in each of the areas of the municipalities in the Province, known as Metropolitan Councils and District Councils.

## **20 Constitution of the local committee**

(1) Each local committee shall consist of not less than five (5) members and not more than seven (7), being fit and proper persons, appointed by the Member of the Executive Council, as follows:

- (a) one or more persons admitted as Attorney or Advocate with at least five years experience in the legal profession or administration of justice;
- (b) a representative of the Local Government Municipality or Council, being a senior employee experienced in or in charge of town or city planning or similar function;
- (c) a representative of the Local Government Municipality or Council, being a senior employee experienced in or in charge of Local Economic Development or similar function;
- (d) one or more representatives appointed from the community in the area of the local committee appointed by reason of his or her knowledge in the field of welfare or socio-economic development or social services; and

[Para (d) substituted by sec 3 of Act 9 of 2003 wef 16 January 2004.]

- (e) a secretary seconded to the local committee.

(2) No person shall be appointed as a member of the local committee if such person-

- (a) is not a citizen of the Republic resident in the Province;
- (b) is an unrehabilitated insolvent;
- (c) is subject to an order of a court declaring such person to be mentally ill or disordered;
- (d) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering, perjury, an offence under this Act or the Corruption Act, 94 of 1992, or any offence involving dishonesty;
- (e) has at any time been removed from an office of trust on account of misconduct; or
- (f) has a direct or indirect financial interest in any liquor business or is a spouse of such a person.

(3) The Member of the Executive Council shall appoint one member of the local committee as a Chairperson and another as a Deputy-Chairperson.

## **21 Powers and functions of local committee**

(1) The local committee shall consider all applications for licences, transfer of licences, amendment of conditions and any other application in terms of this Act within twenty-one (21) days of receipt or such longer period as may be determined by the secretary of the Board in the event of objections lodged against the granting of a particular licence.

(2) The local committee shall make recommendations in respect of all applications and submit them to the Board immediately after consideration of the applications.

(3) The local committee may advise the Board or furnish a report or recommendation to the Board on any matter referred to it by the Board for consideration and arising from the application of this Act or relating to the control over or the distribution of liquor.

(4) The local committee shall perform such other functions as may be assigned to it in terms of this Act.

## **22 General Provisions relating to local committees**

The provisions of sections 5 to 12 of Chapter 2 similarly apply to the local committees with the necessary changes.

### **CHAPTER 3**

#### **APPLICATIONS FOR LICENCES [sec 3-36]**

### **23 Applications**

(1) Every application for a new licence shall be made to the relevant local committee of the district or metropolitan area in which the licence is sought, in the prescribed form by lodgement with the secretary of the local committee and shall provide or be accompanied by -

- (a) a detailed written motivation in support of the licence applied for;
- (b) a detailed sketch plan of the premises showing the rooms, services, buildings, construction material and other pertinent information;
- (c) a detailed written description of the premises to which the application relates, together with colour photographs of the external and internal features of the premises;
- (d) a report of an inspector and reports of any inspection required by any law or by-law;
- (e) proof of publication of notices in the newspaper in terms of section 24;
- (f) a certificate of suitability on the person of the applicant and the application issued by South African Police Services;
- (g) the full business address and location of the premises to which the application relates, identity number or registration number of the applicant, residential address or address of registered office of the applicant;
- (h) proof of affiliation to an association referred to in section 38;
- (i) proof of payment of the prescribed fee; and
- (j) clearance certificate by the South African Revenue Services that the applicant complies with tax laws.

(2) For purposes of considering a licence under subsection (1), the local committee may cause an inspection to be made of the premises to which the application relates and any other investigation the local committee thinks necessary.

(3) Where an application for a licence has been refused by the Board, no new

application may be made in respect of the same premises within a period of one (1) year from the date of refusal, except by special leave granted at the discretion of the Board.

(4) Applications for tavern, pool club, pub, liquor store and night club liquor licences shall also be accompanied by unequivocal approval by the relevant department of the relevant metropolitan or district council, in addition to any zoning or planning or environmental laws requirements.

## **24 Notice of application**

(1) Every applicant shall give notice of an application by publication in no less than two newspapers circulating in the area in which the premises are situated, in the prescribed manner, and in the Provincial Gazette as well as causing the notice to be affixed at the premises.

(2) The notice of application shall be made within seven (7) days prior to lodgement of the application.

(3) Notice of the application shall include the full names of the applicant, intended trading name, identity number or registration number of the applicant, full address and location of the premises, the type of licence applied for, names and nature of educational institutions, names of and distances to similar licensed premises and places of worship within a radius of one (1) kilometre from the premises.

(4) The notice contemplated in subsection (1) shall invite interested persons to lodge any objections in terms of section 25.

## **25 Objections**

(1) Any person may lodge an objection to the granting of a licence in terms of this Act, in the prescribed manner, with the local committee and the applicant within twenty-one (21) days from date of lodgement of the application with the secretary of the local committee referred to in section 23.

[Subsec (1) substituted by sec 4 of Act 9 of 2003 wef 16 January 2004.]

(2) The objection shall fully state the reasons thereof and contain the full names of the person or institution objecting, together with the full address and contact details and be accompanied by any supporting documentation.

## **26 Response by the applicant to objections**

The applicant shall, within a period of seven (7) days of receipt of the objection, lodge his or her written response, if any, to the objections lodged in terms of section 25 by submitting a copy thereof to both the local committee and the persons who lodged the objections.

## **27 Hearing of applications**

(1) The local committee or the Board may convene a hearing to consider any application and objections to the application in question, on such date, time and place as shall be determined by it.

(2) All interested persons, including the applicant and any person who has lodged an objection to an application, shall be afforded an opportunity to be heard and may be represented by a person of their choice.

(3) A hearing may be adjourned and resumed on such date and at such time and place as the local committee or the Board may determine.

## **28 Kinds of licences**

(1) The following licences may be granted for the sale and supply of liquor -

(a) for consumption on the licensed premises concerned -

- (i) hotel liquor licences;
- (ii) restaurant liquor licences;
- (iii) theatre liquor licences;
- (iv) club liquor licences;
- (v) night club liquor licences;
- (vi) gaming premises liquor licences;
- (vii) sports ground liquor licences;
- (viii) pub liquor licences;
- (ix) dance hall liquor licences;
- (x) tavern liquor licences;
- (xi) pool club liquor licences;
- (xii) sorghum beer licences (on consumption); and
- (xiii) catering or occasional permits.

(b) for consumption off the licensed premises concerned -

- (i) wholesale liquor licences;
  - (ii) liquor store licences;
  - (iii) grocers' wine licences; and
  - (iv) micro-manufacturer liquor licence; and
  - (v) sorghum beer licences (off consumption)
- (c) Any other licence that the Board, in its discretion will deem appropriate.

[Para (c) added by sec 5 of Act 9 of 2003 wef 16 January 2004.]

## **29 Content of licences**

(1) A licence grants to the licensee such rights and privileges and subjects him or her to such obligations and responsibilities as may by virtue of this Act be regulated thereby or issue from the holding thereof.

(2) A licence indicates proof of payment of fees.

## **30 Consideration of applications for licences**

(1) An application for a licence shall be considered by the local committee and referred to the Board with recommendations whereafter the Board shall consider the application, and it may -

- (a) refuse the application; or
- (b) grant the application.

(2) The Board shall grant an application for any licence if -

- (a) the premises are or will, on completion, be suitable for the purposes for which they will be used under the licence;
- (b) the applicant concerned is of good character and is otherwise fit to be the holder of the licence;
- (c) the granting of the licence is in the public interest;
- (d) the possibility does not exist that the granting of the application may cause a harmful monopolistic condition to arise or be aggravated; or
- (e) the premises, accommodation, equipment and facilities in respect of which the

licence is to be issued are, or will be, if the applicant is licenced, in compliance with this Act and regulations.

(3) The Board shall grant an application in the case of premises not situated within a radius of five hundred (500) metres in the vicinity of a place of worship, educational institution, similar licensed premises, public transport facility, or such further distance as the Board may determine or as may be prescribed from time to time.

### **31 Applications for catering or occasional permits**

(1) An application for a catering or occasional permit shall be considered by the local committee, and the local committee may grant or refuse the application concerned.

[Subsec (1) substituted by sec 6(a) of Act 9 of 2003 wef 16 January 2004.]

(2) The local committee shall not grant a catering or occasional permit under subsection (1) unless the applicant can show exceptional circumstances that warrant the granting of the catering or occasional permit for a period not longer than seven (7) consecutive days.

[Subsec (2) substituted by sec 6(b) of Act 9 of 2003 wef 16 January 2004.]

(3) A catering or occasional permit shall also be granted on application by the secretary, manager, principal, director or designated senior office-bearer of a bona fide exhibition, sports club, sports ground, cultural or welfare organisation, educational institution, race or sports meeting.

(4) The local committee shall be satisfied that the distribution or sale of liquor is not the principal business of the applicant, but incidental to the occasion held by the applicant.

[Subsec (4) substituted by sec 6(c) of Act 9 of 2003 wef 16 January 2004.]

(5) The local committee shall approve the plan of the premises and may specifically exclude the sale of liquor on certain places on the premises and may determine the kind of liquor to be sold.

[Subsec (5) substituted by sec 6(d) of Act 9 of 2003 wef 16 January 2004.]

### **32 Death or incapability of an applicant**

If a person who has made an application for a licence dies, becomes insolvent, is placed under judicial management or is declared incapable of handling his or her own affairs on or before the date on which the application is considered -

- (a) the administrator of the deceased or insolvent estate, judicial manager or curator concerned or, if such an administrator, manager or curator has not yet been



appointed or the holder of that office is unable or unwilling to act, a person who has an interest in the application and is authorized thereto by a competent authority, shall, subject to the law regarding deceased estates, insolvency, judicial management or mental health, have all such rights as the applicant would have had if he or she had not died, become insolvent, been placed under judicial management or been declared so incapable; and

- (b) the Board may, subject to this Act and the said law, in its discretion consider the application and grant the licence in favour of such an administrator, manager, curator or person or refuse the application.

## **ISSUE OF LICENCES AND PERMITS**

### **33 Licences and permits**

(1) After the Board has granted an application in terms of this Act, it shall, subject to section 35, issue the licence through the local committee to the applicant to sell the kind of liquor provided for in this Act in respect of the kind of licence concerned, or, in the case of a catering or occasional permit, the kind of liquor determined by the local committee and specific places on the premises which have been excluded by the local committee in terms of section 31(5).

[Subsec (1) substituted by sec 7(a) of Act 9 of 2003 wef 16 January 2004.]

(2) The Board or local committee may at any time after the issue of a licence or permit in terms of subsection (1) or section 37, by a notice delivered to the licensee concerned-

- (a) declare the licence or permit to be subject to such conditions or further conditions set out in the notice it may in its discretion impose; or
- (b) suspend, withdraw or amend any condition or declaration imposed or made in terms of this Act.

[Subsec (2) substituted by sec 7(b) of Act 9 of 2003 wef 16 January 2004.]

### **34 Duplicate licences**

(1) The Board may at any time after the issue of a licence under section 33 issue a duplicate licence to the licensee on payment of the prescribed fee and on proof of the destruction or loss of the original licence.

(2) A licence issued under subsection (1), shall be subject to the same conditions set out in the original licence.

### **35 Incomplete premises**

(1) If an application for a licence (excluding a catering or occasional permit) is granted by the Board in respect of premises not yet erected, or premises requiring any structural alteration, addition or reconstruction to be effected so as to make them suitable for the purposes for which they will be used under the licence, the Board shall issue a notice to the applicant concerned in which he or she shall be ordered to comply with such conditions or requirements, referred to in the notice, with regard to those premises as the Board may determine, within such period as may likewise be determined.

(2) The Board may at any time after the issue of such a notice, on application by the applicant concerned -

- (a) withdraw or amend any condition or requirement determined under subsection (1);
- (b) extend the period determined under subsection (1); or
- (c) approve an amended plan in respect of the premises.

(3) The period determined under subsection (1), shall not be longer than twelve (12) months.

(4) When the Board is satisfied that the premises in respect of which a notice has been issued in terms of subsection (1), have been completed in accordance with the plan thereof approved by the Board, the conditions and requirements determined by the Board have been complied with and the premises are suitable for the purposes for which they will be used under the licence concerned, it shall issue the licence in accordance with section 37.

(5) If the licence is not issued before the expiration of the period determined under subsection (1), or extended under subsection (2)(b), the notice concerned shall lapse and the application for the licence shall be deemed not to have been granted.

(6) If an applicant to whom a notice has been issued under subsection (1) dies, becomes insolvent, is placed under judicial management or is declared incapable of handling his or her own affairs -

- (a) the administrator of the deceased or insolvent estate, judicial manager or curator concerned or, if such an administrator, manager or curator has not yet been appointed or the holder of that office is unable or unwilling to act, a person who has an interest in the application and is authorized thereto by the Board, shall, subject to the law regarding deceased estates, insolvency, judicial management or mental health, have all such rights as that applicant would have had if he or she had not died, become insolvent, been placed under judicial management or been declared so incapable; and
- (b) the administrator, manager, curator or person contemplated in paragraph (a) of

this subsection may do anything that he or she may by virtue of the notice be required to do so as to satisfy the Board as to the matters contemplated in subsection (4).

### **36 Disqualification and other incompetence**

A licence shall not be issued nor transferred to a person who is disqualified or otherwise incompetent in terms of this Act to hold the licence concerned.

## **CHAPTER 4 GENERAL CONDITIONS FOR LICENCES [sec 37-104]**

### **37 Conditions for licences and permits**

(1) A licence or permit provided for in this Act shall not be granted to any person who -

- (a) has in the Republic or elsewhere in the preceding ten (10) years been convicted and sentenced for any offence to imprisonment without the option of a fine, unless the Board is of the opinion that the offence was of such a nature that it does not imply that such a person is unsuitable to hold the licence or unless the sentence has been set aside by a court or such a person has received a grant of amnesty or a free pardon;
- (b) has in the preceding five (5) years been convicted of an offence in terms of this Act or the Liquor Act, 1989 (Act 27 of 1989), and was sentenced to a fine of not less than R200 or to imprisonment without the option of a fine or both imprisonment and fine or has paid an admission of guilt fine of not less than R200 unless the Board exercises its discretion in favour of granting the licence or unless the sentence has been set aside by a court or such a person has received a grant of amnesty or a free pardon in respect of any one of the sentences or the fine has been remitted.

[Para (b) substituted by sec 8 of Act 9 of 2003 wef 16 January 2004.]

- (c) is an unrehabilitated insolvent;
- (d) is a minor on the date of the consideration of the application concerned;
- (e) is the spouse of a person contemplated in paragraph (a), (b) or (c);
- (f) is a liquor producer or the agent of a liquor producer;
- (g) is a manufacturer of beer, other than a micro-manufacturer or the agent of such person;
- (h) is a person who has a financial interest in the business of a producer or a

manufacturer of beer, or the agent of such a person;

- (i) is a company in which shareholders having a financial interest in the business of a producer or a manufacturer of beer, together hold a controlling interest, or the agent of such a company; or
- (j) is a company in which a company contemplated in paragraph (i) holds a controlling interest, or the agent of such a company;
- (k) is not domiciled in the Republic.

(2) If a person who is in terms of subsection (1) disqualified to hold a licence -

- (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, a licence shall also not be granted to that company, corporation, partnership or trust.

(3) A licence issued in terms of this Act shall be subject to such conditions set out in the licence as the Board may in its discretion impose.

(4) A licensee shall, as a condition of a licence issued in terms of this Act, permit and enable the inspection and a search of licensed premises at all reasonable times by an inspector.

(5) The licence shall at all times be kept on the licensed premises, be displayed on a conspicuous place on the premises and be produced on demand by a person authorized thereto by this Act or any law.

### **38 Liquor Trade Association**

(1) There is established a Liquor Trade Association in the Province to be known as the Gauteng Liquor Traders Association.

(2) (a) All other Associations active in the liquor trade must affiliate to the Liquor Trade Association.

(b) All licensees and applicants for licences who are not members of Associations referred to in paragraph (a) must be members of the Gauteng Liquor Traders Association.

(3) The Member of the Executive Council may prescribe a Minimum Standard Constitution for the Liquor Trade Association.

(4) An Association referred to in subsection (1) may have branches in

metropolitan councils or district councils.

(5) The Association shall promote an organized trade in liquor within the Province through-

- (a) diligence amongst its members and affiliates;
- (b) compliance with all laws and policies relating to the regulation of liquor;
- (c) responsible consumption of liquor; and
- (d) any other matter ancillary thereto.

[Subsec (5) substituted by sec 9 of Act 9 of 2003 wef 16 January 2004.]

(6) The Association shall be funded out of the funds of the Board at a percentage determined by the Member of the Executive Council.

(7) The Association shall, as soon as practicable after the close of the financial year but not later than three months, submit to the Member of the Executive Council an annual report on its activities during the preceding financial year.

### **39 Financial and controlling interests**

(1) Subject to the provisions of section 37, a producer, a manufacturer of beer or a person who has a controlling interest in a company, partnership or close corporation which is a producer or a manufacturer of beer, shall not without the consent of the Member of the Executive Council, be permitted on application and on such conditions as he or she may think fit, to directly or indirectly procure a financial interest in the business to which a licence referred to in section 28 relates.

(2) The holder of a licence contemplated in subsection (1) or a person who has a controlling interest in a company, partnership or close corporation which is a licensee, shall not without the consent of the Member of the Executive Council, be permitted on application and on such conditions as he or she may think fit, to directly or indirectly procure a financial interest in the business of a producer or a manufacturer of beer.

(3) A licensee shall not permit any other person to procure a financial or controlling interest in the business to which the licence relates, unless the Board has, on application by the licensee, as prescribed, granted consent that such a person may procure such an interest in that business.

(4) The Member of the Executive Council shall not grant consent under subsection (1)-

- (a) in the case of a business to which a club liquor licence relates;

- (b) where the person who is the subject of the application, is disqualified in terms of this Act or other laws to hold a licence; or
- (c) If in his or her opinion the possibility exists that the granting of the application may cause a harmful monopolistic situation to arise or be aggravated in the liquor trade or a branch thereof.

[Para (c) substituted by sec 10 of Act 9 of 2003 wef 16 January 2004.]

#### **40 Management**

(1) A person other than a natural person shall not conduct any business under a licence unless a natural person who permanently resides in the Republic and who is not disqualified in terms of this Act to hold a licence is appointed by him or her in the prescribed manner to manage and be responsible for its business.

(2) A natural person who is a licensee may in the prescribed manner appoint another natural person who permanently resides in the Republic and who is not disqualified in terms of this Act to hold a licence, to manage and be responsible for the business to which the first-mentioned licence relates.

(3) (a) A person managing and responsible for a business to which a licence relates, shall be subject to the same obligations and liabilities as the licensee concerned.

(b) Where an offence under this Act or the regulations is committed by a juristic person, a person managing and responsible for a business to which a licence relates, shall be guilty of the same offence as the juristic person and be jointly and severally liable to the penalty prescribed for the offence.

(c) Nothing in this subsection relieves the juristic person or the person who commits the offence from liability therefore nor releases the licensee from any obligation or liability to which he or she is subject in law.

#### **41 Nature of premises**

(1) Subject to section 91 and without derogating from section 42, a licensee shall not conduct his or her business under the licence on premises on which any other business, including a business to which any other licence relates, or any trade or occupation is carried on or pursued.

(2) Two or more premises under the same roof shall for the purposes of subsection (1) be deemed to be one if those premises are not completely separated from each other by a wall in which there is no door, window or other aperture.

(3) The public area of on-consumption premises shall not be less than the prescribed size, unless the Board, on the recommendation of the local committee, determines otherwise.

(4) The total floor area of off-consumption premises shall not be less than the prescribed size, unless the Board, on the recommendation of the local committee, determines otherwise.

(5) Premises shall at all times comply with all laws, metropolitan or district council by-laws and regulations, including health and smoking laws.

#### **42 Nature of business**

(1) Notwithstanding any law to the contrary -

- (a) the holder of an on-consumption licence may also sell or supply newspapers, light refreshments and smokers' requisites on the licensed premises, or conduct such other business thereon as the Board, on application, when granting the licence concerned may, on application, at any time thereafter, approve subject to such conditions as the Board may think fit; and
- (b) the holder of a liquor store licence referred to in section 28 may also sell or supply mineral waters, other drinks, tobacco, cigars, cigarettes, matches, cooler bags and such other articles as the Board may authorise.

#### **43 Alterations to and extension of licensed premises**

(1) A licensee shall not effect any structural alteration, addition or reconstruction of or to the licensed premises or extend the licensed premises, except with the consent of the Board, granted on application by him or her, as prescribed and on such conditions as the Board may think fit.

#### **44 Place for sale of liquor**

(1) A licensee shall not sell liquor at any place other than the licensed premises.

(2) The Board may, on application by the holder of an on-consumption licence, grant consent to that holder, on such conditions as the Board may think fit and for such period as it may determine, to carry on his or her business on only a part of the licensed premises.

#### **45 Employees**

(1) A licensee shall not -

- (a) in or in connection with the sale or supply of liquor, or
- (b) during the times when he or she may sell or supply liquor, in any restricted part (if any) of the licensed premises, employ any person -

- (i) who is a minor; or
- (ii) who to his or her knowledge has within the preceding two years been convicted of a contravention of any law governing the sale of liquor and has been sentenced therefore to imprisonment without the option of a fine or a fine or both imprisonment and a fine.

(2) Subsection (1) shall not apply -

- (a) to any person of or above the age of 18 years who is undergoing or has undergone training in catering services, and who is employed on the premises of the licensee to whom he or she is duly apprenticed in any capacity in connection with the management of the business to which the licence relates; or
- (b) to a member of the family of the licensee or of the manager of the business, who is above the age of 18 years, to which the licence relates.

#### **46 Minors**

A licensee shall not sell or supply liquor on the licensed premises to persons under the age of 18 years nor allow such a person who is not a person contemplated in section 45 (2), to be in any restricted part of those premises.

#### **47 Intoxicated persons**

(1) A licensee shall refuse to admit to the licensed premises or any part thereof, or sell or supply liquor to an intoxicated person and shall have such person removed from the licensed premises or any part thereof.

(2) A licensee may request any police officer to remove or assist in removing from the licensed premises any person contemplated in subsection (1).

#### **48 Records**

(1) The holder of a licence shall keep the prescribed records in the prescribed manner.

(2) The Board may at any time by a notice delivered to the licensee -

- (a) direct that licensee to keep such additional records as may be determined in the notice, in such manner as may likewise be determined; or
- (b) withdraw or amend any direction contemplated in paragraph (a).

#### **49 Furnishing of information and documents**



A licensee shall, at the request of the Board, furnish such information and documents in connection with the licensed premises including a description and plan thereof, the business to which the licence relates or that licensee's interests in the liquor trade or a branch thereof as the Board may require.

## **50 Quality of liquor**

A licensee shall not sell or supply any illegal or counterfeit liquor.

## **SPECIAL CONDITIONS APPLICABLE TO ON-CONSUMPTION LICENCES**

### *Overall conditions*

## **51 Place for consumption of liquor**

(1) The holder of an on-consumption licence shall ensure that liquor sold thereunder be consumed on the licensed premises only.

(2) Notwithstanding any provision of this Act, the holder of an on-consumption licence may remain open for purposes stated in the licence from 21h00 of the evening of December 31 until 02h00 in the morning of January 1, unless otherwise prescribed.

[Subsec (2) substituted by sec 11 of Act 9 of 2003 wef 16 January 2004.]

### *Hotel liquor licences*

## **52 Nature of business**

(1) The holder of a hotel liquor licence shall at all times maintain on the licensed premises a bona fide hotel at which accommodation and meals are regularly supplied to guests.

(2) A record of all lodgers shall be kept on the licensed premises at all times.

## **53 Times of business**

The holder of a hotel liquor licence may, notwithstanding any law to the contrary, on any day during the prescribed times, sell liquor on the licensed premises to a lodger or guest for consumption by the lodger or guest in the hotel room or to any person taking a meal purchased on those premises and consuming the liquor at or immediately before or after the meal.

### *Restaurant liquor licence*

## **54 Nature of business**

The holder of a restaurant liquor licence shall at all times maintain on the licensed premises a bona fide restaurant at which meals are regularly supplied to guests.

### **55 Times of business**

The holder of a restaurant liquor licence may, notwithstanding any law to the contrary, sell liquor on any day during the prescribed times, only to a person taking an ordinary meal purchased on the licensed premises and consuming the liquor at or immediately before or after the meal.

### *Theatre liquor licences*

### **56 Nature of business**

(1) The holder of a theatre liquor licence shall at all times maintain on the licensed premises a bona fide theatre at which dramatic performances, plays, concerts or films are regularly presented or shown to the public.

(2) The holder of such a licence shall not sell or supply liquor at or immediately before or after a particular presentation or show to a person who has not been granted access to that presentation or show.

### **57 Times of business**

The holder of a theatre liquor licence may, notwithstanding any law to the contrary, sell liquor on any day during the prescribed times.

### *Club liquor licences*

### **58 Nature of business**

(1) A club liquor licence shall not be granted except to a club in respect of which the Board is satisfied that it is a bona fide club and that, according to the constitution or rules thereof -

- (a) the club consists of at least fifteen 15 ordinary members;
- (b) its management is elected by its members and regularly holds meetings of which proper minutes are kept;
- (c) only its members including bona fide reciprocity members are permitted to pay for facilities, liquor or refreshments supplied on the premises of the club;
- (d) in so far as the use of its facilities by guests excluding family members of its members is permitted by those rules, the number of guests of any member may not on any occasion exceed the number so permitted;

- (e) proper records, including a register of members, are kept;
- (f) members pay an annual subscription fee; and
- (g) no profit from the sale of liquor by the club accrues to any individual.

(2) The holder of a club liquor licence shall at all times maintain on the licensed premises a bona fide club in respect of which the requirements of this Act are being complied with.

## **59 Times of business**

The holder of a club liquor licence may, notwithstanding any law to the contrary, sell liquor on any day during the prescribed times.

## **60 Records**

The holder of a club liquor licence shall not sell or supply liquor to a member of the club for consumption by that member's guest unless that member has entered his or her name and the name and address of that guest clearly and indelibly in the applicable records which that holder is required to keep by virtue of this Act.

### *Tavern liquor licences*

## **61 Nature of business**

(1) The holder of a tavern licence shall at all times ensure that the licensed premises is separate from any other dwelling, especially a residential dwelling or if attached to any dwelling, it shall be separated by means of walls and securable doors.

(2) The licensee shall at all times provide food and various forms of entertainment, of acceptable standards, on the licensed premises.

## **62 Times of business**

The holder of a tavern liquor licence may, notwithstanding any law to the contrary, sell liquor on any day during the prescribed times.

### *Pool club liquor licences*

## **63 Nature of business**

The holder of a pool club licence shall maintain on the licensed premises a bona fide pool club providing games defined in this Act.

#### **64 Times of business**

(1) The holder of a pool club liquor licence may, notwithstanding any law to the contrary, sell liquor on any day during the prescribed times.

#### *Dance hall liquor licences*

#### **65 Nature of business**

The holder of a dance hall liquor licence shall conduct on the licensed premises the business as defined in this Act.

#### **66 Times of business**

The holder of a dance hall liquor licence may, notwithstanding any law to the contrary, sell liquor on any day during the prescribed times.

#### *Nightclub liquor licences*

#### **67 Nature of premises**

The holder of a nightclub liquor licence shall maintain on the licensed premises facilities, which include the provision of light meals, dancing and entertainment

#### **68 Times of business**

The holder of a night club liquor licence may, notwithstanding any law to the contrary, sell liquor on any day during the prescribed times to a person visiting the nightclub and consuming the liquor on the premises.

#### *Pub liquor licences*

#### **69 Nature of business**

The holder of a pub liquor licence shall at all times ensure that liquor is sold and consumed on the premises together with the provision of snacks or light meals.

#### **70 Times of business**

The holder of a pub liquor licence may, notwithstanding any law to the contrary, sell liquor on any day during the prescribed times.

#### *Gaming Premises liquor licences*

#### **71 Nature of business**

(1) The holder of a gaming premises liquor licence shall supply all kinds of liquor for consumption on the licensed premises.

(2) The holder of a gaming premises liquor licence shall conduct a lawful gaming business, including betting, on the licensed premises.

## **72 Times of Business**

The holder of a gaming premises liquor licence may, notwithstanding any law to the contrary, sell or supply liquor on any day during the prescribed times.

### *Sorghum beer licences*

## **73 Nature of business**

(1) The holder of a sorghum beer licence referred to in this Act shall sell only sorghum beer for consumption on the licensed premises or off the licensed premises.

(2) The holder of a sorghum beer licence who supplies sorghum beer for consumption on the licensed premises shall provide ordinary meals.

## **74 Times of Business**

The holder of a sorghum beer licence may, notwithstanding any law to the contrary, sell sorghum beer on any day during the prescribed times.

### *Catering or occasional permit*

## **75 Nature of business**

The holder of a catering or occasional permit, which has been granted in respect of any premises, shall ensure that liquor provided to members or guests at the event is for on-consumption only.

## **76 Times of business**

The holder of a catering or occasional permit may, notwithstanding any law to the contrary, sell or supply liquor on any day during the prescribed times.

### *Sports ground liquor licences*

## **77 Nature of business**

The holder of a sports ground liquor licence shall at all times maintain on the premises a bona fide sports club on which public sports games or recreations are regularly held.

## **78 Times of business**

The holder of a sports ground liquor licence may, notwithstanding any law to the contrary, sell liquor on any day during the prescribed times on which public sports are held on the sports games or recreations ground concerned.

## **SPECIAL CONDITIONS APPLICABLE TO OFF-CONSUMPTION LICENCES**

### *Overall conditions*

## **79 Place for consumption of liquor**

(1) Subject to subsection (2), the holder of every off-consumption licence shall ensure that no liquor be consumed on the licensed premises.

(2) The holder of a wholesale liquor licence, micro-manufacturer's licence or liquor store licence shall ensure that liquor supplied in terms of a licence granted in terms of this Act, be only consumed in the place for such supply determined under the applicable section.

## **80 Delivery of liquor**

(1) The holder of an off-consumption licence 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, in the prescribed form if any form is prescribed, 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; or
- (c) deliver liquor to an address not given in that invoice.

(2) Subsection (1) shall not apply to the delivery of liquor in the ordinary course of business to the holder of a licence or an exempted person.

### *Wholesale liquor licences*

## **81 Nature of business**

(1) The holder of a wholesale liquor licence shall not sell or supply liquor to a person who is not the holder of a licence or an exempted person.

(2) Subsection (1) of this section shall not apply to the supply of liquor for the purpose of section 83.

## **82 Times of business**

The holder of a wholesale liquor licence may, notwithstanding any law to the contrary, sell or deliver liquor on any day during the prescribed times.

## **83 Supply of liquor for on-consumption**

(1) An approval may, on application, be granted by the Board when granting a wholesale liquor licence or at any time after a wholesale liquor licence was issued to the holder of such wholesale liquor licence to supply his or her liquor free of charge in such place on the licensed premises, to be set apart for that purpose, as the Board may determine, to -

- (a) a *bona fide* visitor to those premises;
- (b) a *bona fide* guest; or
- (c) subject to section 125(g), a person employed in connection with the carrying on of the business to which the licence relates, for consumption in that place, except an employee contemplated in section 45(2).

(2) The Board may issue such approval subject to conditions set out in the approval as the Board may in its discretion impose.

(3) The Board may at any time after the issue of such approval, by a notice delivered or to the holder of the licence concerned -

- (a) declare the approval to be subject to such conditions or further conditions set out in the notice as in its discretion impose;
- (b) withdraw or amend any condition or declaration imposed or made by the Board under this section;
- (c) on application, redetermine the place contemplated in subsection (1); or
- (d) withdraw any approval granted under subsection (1).

### ***Micro-manufacturer's licences***

## **84 Nature of business**

(1) Micro-manufacturers shall be prescribed and a micro-manufacturer's licence

shall not be granted except to a person who engages in the manufacturing of any other prescribed fermented beverage.

(2) Subject to subsection (4), the holder of a micro-manufacturer's licence shall not sell or supply liquor to a person who is not the holder of a licence or an exempted person.

(3) Subsection (2) of this section shall not apply to the sale of liquor for the purpose of section 89.

(4) An approval may, on application, be granted by the Board when granting a micro-manufacturer's licence or at any time after such a licence was issued to the licensee to sell liquor to persons referred to in subsection (2), subject to such conditions set out in the approval as it may in its discretion impose.

(5) The Board may at any time after the issue of such approval, by a notice delivered to the holder of the licence concerned -

- (a) declare the approval to be subject to conditions or further conditions set out in the notice as it may in its discretion impose; or
- (b) withdraw or amend any condition or declaration imposed or made by it under this section.

## **85 Times of business**

The holder of a micro-manufacturer's licence may, notwithstanding any law to the contrary sell or deliver liquor on any day during the prescribed times.

## **86 Supply of liquor for on-consumption**

(1) An approval may, on application, be granted by the Board when granting a micro-manufacturer's licence to supply any liquor free of charge in such place on the licensed premises to be set apart for that purpose, as the Board may determine, to -

- (a) a *bona fide* visitor to those premises;
- (b) a *bona fide* guest; or
- (c) Subject to 125(a), a person employed in the carrying on of the business to which the licence relates, except an employee contemplated in section 45(2), for consumption in that place.

[Para (c) substituted by sec 12 of Act 9 of 2003 wef 16 January 2004.]

(2) The Board may issue such approval subject to conditions set out in the approval as it may in its discretion impose.



(3) The Board may at any time after the issue of the approval, by a notice delivered to the holder of the licence concerned -

- (a) declare the approval to be subject to such conditions or further conditions set out in the notice as it may in its discretion impose;
- (b) withdraw or amend any condition or declaration imposed or made by the Board under this section;
- (c) on application, redetermine the place contemplated in subsection (1); or
- (d) withdraw any approval granted under subsection (1).

### *Liquor store licences*

#### **87 Capacity and condition of receptacles**

The holder of a liquor store licence shall not sell liquor in a receptacle, which is not properly and securely sealed and shall not sell liquor other than beer in a receptacle, which has a capacity of more than five (5) litres.

#### **88 Times of business**

The holder of a liquor store licence may, notwithstanding any law to the contrary, sell or supply liquor on any day during the prescribed times.

#### **89 Supply of liquor for on-consumption**

(1) An approval may, on application, be granted by the Board when granting a liquor store licence to supply liquor free of charge to a prospective client for consumption, solely for the purpose of tasting, in such place on the licensed premises, to be set apart for that purpose, as the Board may determine.

(2) The Board may issue such an approval subject to such conditions set out in the approval as it may in its discretion impose.

(3) The Board may at any time after the issue of such approval, by a notice, delivered to the holder of the licence concerned -

- (a) declare the approval to be subject to such conditions or further conditions set out in the notice as he or she may in his or her discretion impose;
- (b) withdraw or amend any condition or declaration imposed or made by it under this section;

- (c) on application, redetermine the place contemplated in subsection (1); or
- (d) withdraw any approval granted under subsection (1).

### *Grocers' wine licences*

#### **90 Nature of premises**

The holder of a grocer's wine licence shall at all times carry on the business of a grocer on the licensed premises.

#### **91 Kind of liquor**

The holder of a grocer's wine licence shall not sell liquor other than table wine.

#### **92 Capacity and condition of receptacles**

The holder of a grocer's wine licence shall not sell liquor in a receptacle which has a capacity of more than five litres and which is not properly and securely sealed.

#### **93 Times of business**

The holder of a grocer's wine licence may, notwithstanding any law to the contrary, sell or supply liquor on any day during the prescribed times.

### *Sorghum beer licences (Off consumption)*

#### **94 Capacity and condition of receptacles**

The holder of a sorghum beer licence shall not sell sorghum beer in a receptacle, which is not properly and securely sealed and shall not sell sorghum beer other than sorghum beer in a receptacle, which has a capacity of more than five (5) litres.

#### **95 Nature of business**

The holder of a sorghum beer licence may with the approval of the Board and on the recommendation of the local committee concerned, conduct other business on the licensed premises.

#### **96 Times of business**

The holder of a sorghum beer licence may, notwithstanding any law to the contrary, sell sorghum beer on any day during the prescribed times.

## **VALIDITY OF LICENCES AND PERMITS**

## **97 Commencement of licences and permits**

A licence or permit which has been issued, shall be valid from the date of payment of the prescribed fee.

## **98 Renewal of licences**

Every licence shall be renewed annually within twelve (12) months from date of issue by payment of an annual prescribed fee.

## **99 Lapse of licences and permits**

(1) A licence shall lapse -

- (a) on a date on which the licensee abandons it in writing; or
- (b) within two (2) months after the lapse of the renewal period in respect of which the applicable prescribed fees under section 98 are not paid, or
- (c) on a date otherwise determined by the Board.

(2) A permit shall lapse on a date set by the Board on granting the permit.

## **100 Restoration of lapsed licences**

The validity of a licence which has lapsed, and the rights, privileges, obligations and liabilities which were attached thereto immediately before the date on which it lapsed, shall be restored from the date of payment of, where the licence has lapsed under the circumstances contemplated in section 96, the prescribed fee -

- (a) plus a surcharge of 50% if paid within one (1) month after the lapse of the renewal period; or
- (b) plus a surcharge of 100% if paid within two (2) months after the lapse of the renewal period, of the preceding year in respect of which those fees should have been paid;

## **101 Sale of liquor after lapse or suspension of licences**

The holder of a licence which has lapsed or has been suspended may, within a period of 30 days after the date on which it has lapsed or the suspension thereof has commenced, through a licensed auctioneer sell by public auction, held on the licensed premises concerned or the premises of that auctioneer, any liquor which was on those premises on that date.

## **102 Fees not refundable**

The fact that a licence has lapsed or has been suspended or has again become valid shall not entitle the person who was or is the holder thereof, as the case may be, to a refund of any prescribed fees, or any part thereof, already paid in connection with the licence concerned.

## **TRANSFER OF LICENCES AND PERMITS**

### **103 Non-transferability of permits**

A permit issued in terms of this Act shall not be transferable to another person.

### **104 Applications for transfer of a licence**

(1) A licensee may at any time make application for the transfer thereof to another person, the prospective holder.

(2) The application in subsection (1) shall be made to the local committee on payment of the prescribed fee and in the prescribed manner.

(3) The application shall be accompanied by a certificate of suitability on the person of the transferee issued by South African Police Services and such other details as may be prescribed.

(4) The Board shall consider each application for the transfer of a licence and may refuse or grant the application.

- (5) The Board shall not grant such an application -
- (a) unless the prospective holder concerned -
    - (i) is of good character and is otherwise fit and proper to be issued a licence in terms of this Act; and
    - (ii) is not disqualified in terms of this Act; or
  - (b) if the possibility exists that the granting of the application may cause a harmful monopolistic condition to arise or be aggravated in the liquor trade or a branch thereof.

(6) Upon granting an application for the transfer of a licence the Board shall issue a licence to the transferee who then becomes the licensee, with all rights and obligations of a licensee in terms of this Act.

[Subsec (6) substituted by sec 13 of Act 9 of 2003 wef 16 January 2004.]

(7) The provisions of section 32 shall also apply in respect of prospective licence

holders.

## **CHAPTER 5 ENFORCEMENT AND JUDICIAL PROCEEDINGS [sec 105-121]**

### **SANCTIONS BY THE BOARD**

#### **105 Investigation by the Inspectorate**

(1) Members of the inspectorate appointed in terms of section 105 may establish and investigate any suspected or reported failure to comply with or a contravention of any term or condition of a licence or permit or a provision of this Act.

(2) The Inspectorate may summons any person who may be able to give information concerning the subject of the investigation or who is believed to have in his or her possession, custody or control any book, document or thing which has or might have a bearing on the subject to appear before it at a time and place specified in the summons to be questioned or to produce such book, document or thing.

(3) The Inspectorate may retain for examination, for such period as is reasonable in its discretion any book, document or thing produced.

#### **106 Inquiry by the Board**

(1) The Board shall convene an inquiry for purposes of section 105.

[Subsec (1) substituted by sec 14 of Act 9 of 2003 wef 16 January 2004.]

(2) The provisions of sections 10 and 11 shall apply in respect of proceedings in terms hereof.

(3) The licensee shall be afforded an opportunity to be heard at such hearing and may be assisted by any person of his or her choice.

(4) The Board shall keep a record of the proceedings of the hearing.

(5) Notwithstanding any provision herein, the Board may, at any time before or during the investigation or hearing, suspend the licence concerned subject to any conditions it may deem necessary, if there is reason to believe that the non-compliance or contravention in question is of such a nature that public interest requires the licence to be suspended without delay.

#### **107 Sanctions by the Board**

(1) The Board may suspend for a specified period or revoke a licence if -

(a) any information in the application for such a licence is or was false in any

material respect or subject to a material omission;

- (b) the licensee or any person or manager in control of the business of the licensee has been convicted of an offence in terms of this Act;
- (c) the licensee or any person or manager in control of the business of the licensee has become the subject of a disqualification in terms of section 35 of this Act; or
- (d) the licensee fails to pay a fine contemplated by the Board in subsection (2).

(2) The Board may impose on the licensee a fine not exceeding R200 000,00 or suspend for a specified period or revoke a licence if the licensee has failed to comply with or contravened any term or condition of a licence or permit or a provision of this Act.

(3) An order by the Board in terms of subsection (2) shall have the effect of a civil judgement.

## **INSPECTIONS**

### **108 Appointment of inspectors**

(1) Subject to any other law, the Member of the Executive Council or a person designated by him or her shall appoint inspectors who will be an inspectorate.

(2) An appointment in terms of subsection (1) may be general or specific.

(3) An inspector shall be a public servant and shall be accountable to the Head of Department.

(4) A certificate of appointment in the prescribed form issued by the Member of the Executive Council, certifying that a person has been appointed an inspector, shall be *prima facie* proof of the appointment

(5) The MEC may prescribe the criteria and procedure for appointment of inspectors.

### **109 Powers and duties of inspectors**

(1) An inspection shall be conducted by an inspector at the premises in respect of every new application for a liquor licence.

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

(3) Subject to sections 107 and 108 and any other law, an inspector who conducts an inspection may -

- (a) question any person present on any land or premises in respect of any matter which may be relevant to the inspection;
- (b) question any person whom the inspector believes may have information relevant to the inspection;
- (c) inspect any document that a person is required to maintain in terms of this Act or any other law or which may be relevant to any liquor related inspection;
- (d) copy any document referred to in paragraph (c), or if necessary, remove the document in order to copy it.

[Para (d) substituted by sec 15 of Act 9 of 2003 wef 16 January 2004.]

- (e) take samples of any substance that is relevant to the work or inspection;
- (f) take photos or make audio-visual recordings of anything or any person, process, action or condition on or regarding any land or premises; and
- (g) do all things necessary for conducting the inspection.

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

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

## **110 Entry with warrant**

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

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

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

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

specifically -

- (a) identify the land or premises that may be entered and inspected; and
- (b) authorise the inspector to enter and inspect the land or premises and to do anything contemplated in sections 108, 109 and 110.

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

- (a) it is executed;
- (b) it is cancelled by the magistrate who issued it or, if that magistrate is not available, by another magistrate;
- (c) the purpose for which it was issued has lapsed; or
- (d) 90 days have passed since the date it was issued.

(5) Before entering a premises and commencing any inspection, an inspector who carries out a warrant shall -

- (a) if the owner of or a person apparently in control of the land or premises is present -
  - (i) identify himself or herself and explain his or her authority to that person and furnish proof of his or her designation; and
  - (ii) hand a copy of the warrant to that person named in it; or
- (ii) if the owner or person apparently in control of the land or premises is absent or refuses to accept a copy, attach a copy of the warrant to the land or premises in a prominent and visible place.

## **111 Entry without warrant**

(1) An inspector who does not have a warrant in his or her possession may enter and inspect any land or premises with the consent of the owner or person apparently in control of the land or those premises.

(2) In addition to the entry permitted in terms of subsection (1), an inspector may enter any land or premises without a warrant -

- (a) if authorised to do so by any other law; or
- (b) in respect of which there is an outstanding non-compliance notice issued in terms of section 113, for the purpose of determining whether that notice has



been complied with.

(3) Before commencing an inspection on any land or premises in terms of this section, an inspector shall identify himself or herself and explain his or her authority and furnish proof of his or her designation to the person apparently in control of the land or premises or the person who gave permission to enter.

(4) An entry and inspection without a warrant shall be carried out only during prescribed normal hours of business.

## **112 Use of force**

(1) An inspector executing a warrant in terms of section 110 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.

[Subsec (1) substituted by sec 16 of Act 9 of 2003 wef 16 January 2004.]

(2) Before using force, the person executing the warrant shall audibly demand admission and shall announce his or her purpose, unless he or she reasonably believes that doing so may induce someone to destroy, dispose of, or tamper with any object or document that is the object of the inspection.

(3) Subject to any other law or in the case of an emergency, force may not be used to effect an entry or conduct an inspection in terms of section 108.

## **113 Inspector may be accompanied**

A member of the South African Police Service, Metro Police, South African National Defence Force or any law enforcement agency may accompany an inspector during an inspection, or any other person reasonably required to assist in conducting the inspection, or all of them.

## **114 Duty to produce documents**

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

## **115 Duty to answer questions and assist inspector**

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

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

that person on a charge relating to -

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

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

## **116 Non-compliance notices**

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

(2) A non-compliance notice contemplated in subsection (1) shall set out -

- (a) the provision that has allegedly not been complied with;
- (b) details of the nature and extent of the alleged non-compliance;
- (c) any steps that are required to be taken and the period within which those steps shall be taken; and
- (d) any penalty that may be imposed in terms of section 133 in the event of non-compliance with those steps.

[Para (d) substituted by sec 17 of Act 9 of 2003 wef 16 January 2004.]

(3) A non-compliance notice contemplated in subsection (1) shall remain in force until an inspector issues a compliance certificate contemplated in subsection (4) in respect of that notice and shall be submitted to the Board.

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

## **117 Closing of licensed and other premises**

(1) An inspector or a member of the Board may, if he or she is of the opinion that a strike or lock-out or public disturbance, disorder, riot or public violence is occurring or threatening at or near any licensed premises or any premises on or place in which liquor may be sold without a licence, in such manner as may appear to him or her in the

circumstances of the case to be the most effective, order the licensee or the person concerned, as the case may be, or the manager or agent of the person, to close the premises or place concerned during the times or for the periods that the inspector or member may deem fit

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

(3) Any order given under subsection (1), may at any time be withdrawn by the person who gave such an order.

### **118 Reports on applications**

(1) An inspector shall -

- (a) in respect of every application made in terms of this Act, make a report to the local committee and the Board on such matters as may be prescribed or which ought, in the opinion of that inspector, to be taken into consideration in respect of the application concerned; and
- (b) at the request of the local committee or the Board, furnish such information or further information in connection with any matter to the local committee or the Board as may be requested from him or her.

### **119 Reports on certain licensees and premises**

(1) A inspector shall, as soon as possible submit to the Board a report -

- (a) on any failure by the licensee to discharge an obligation which is attached to the licence or permit concerned;
- (b) if such a licensee becomes disqualified or otherwise incompetent in terms of this Act to hold the licence or permit concerned;
- (c) if he or she is of the opinion that alterations or repairs ought to be effected to any licensed premises to which a licence relates; or
- (d) on any other matter which in the opinion of that officer ought to be brought to the notice of the Board.

### **120 Reports on certain convictions**

When the holder of a licence or a person who has been appointed in terms of this Act to manage and be responsible for a business under a licence has been convicted of an

offence in terms of either this Act or any other law or the common law and is convicted and sentenced therefore to a fine or to imprisonment without the option of a fine or both imprisonment and fine, the South African Police Services shall submit to the Board a report on the conviction and the circumstances of the offence.

## **SEIZURE**

### **121 Seizure**

(1) A police officer or inspector may seize any item, including liquor if he or she reasonably suspects that the item -

- (a) will afford evidence of a contravention of any term or condition of a licence or permit or a provision of this Act or an offence under this Act;
- (b) was used or is being used in connection with the contravention of any term or condition of a licence or permit or a provision of this Act or an offence under this Act; and
- (c) unless seized, is likely to be used or continued to be used in the contravention of any term or condition of a licence or permit or a provision of this Act or an offence under this Act;

(2) A person seizing anything will issue, to the person from whom the item is seized, a receipt of the item seized and explain the reasons for the seizure to the said person.

(3) The item seized shall, where practically possible, be preserved until the Board or a court of law has determined the matter.

## **CHAPTER 6 COSTS [sec 122]**

### **122 Costs incurred by Board or local committee**

All reasonable costs incurred by the Board, a local committee or any State Department, in the inspection of premises in respect of any application or investigation or other incidental matter, in terms of this Act may be recovered from an applicant for a licence or a licensee.

## **CHAPTER 7 PROHIBITED AND CONTROLLED LIQUIDS [sec 123-124]**

### **123 Prohibited concoctions and drinks**

(1) No person shall manufacture, have in his or her possession or custody or under

his or her control or consume or sell, supply or give to any person -

- (a) any concoction manufactured by the fermentation of treacle, sugar or other substances, by whatever name they are known;
- (b) any concoction which, though called by another name is similar or substantially similar to any of the concoctions referred to in paragraph (a);
- (c) any concoction manufactured by the fermentation of any substance the consumption of which would, in the opinion of the Member of the Executive Council, be prejudicial to the health and well-being of the population of the Province, and specified by him or her by a notice in the Provincial Gazette; or
- (d) any drink manufactured by the distillation of any concoction referred to in paragraph (a), (b), or (c).

(2) The Member of the Executive Council may at any time by a like notice withdraw or amend any notice issued under subsection (1)(c).

#### **124 Methylated spirit**

(1) The Member of the Executive Council may make regulations regarding -

- (a) the regulation and restriction of the importation, transshipment, conveyance, transmission, keeping, sale, supply or use of methylated spirit;
- (b) the categories of persons who may sell methylated spirit;  

[Para (b) substituted by sec 18 of Act 9 of 2003 wef 16 January 2004.]
- (c) the keeping of records or other documents in respect of any dealing in methylated spirit, the form and manner in which the records or other documents shall be kept and the particulars to be entered therein;
- (d) the custody and retention of records or other documents contemplated in paragraph (c);
- (e) the denaturation, odourisation, colouring and rendering impotable of methylated spirit sold or kept for sale, and the manner in which this shall be done;
- (f) the quantities of methylated spirit which may be sold on any occasion to any person and the receptacles in which it shall be sold; and
- (g) the prohibition or restriction of the purchase or possession of methylated spirit, including the granting of permits for the purchase or possession thereof.

(2) A regulation made under this section may for a contravention thereof or

failure to comply therewith prescribe a penalty which shall not exceed imprisonment for a period of six months.

(3) Different regulations may be made under this section in respect of different categories of persons or different areas.

## **CHAPTER 8** **EXEMPTIONS [sec 125-126]**

### **125 Exemptions by declaration of the Board**

(1) The Board may, on application and if circumstances so warrant, declare that this Act, excluding such provisions as it may determine, shall not apply to the sale, by a person named in the declaration, of liquor -

- (a) on premises occupied, controlled or maintained by a department or organ of State;
- (b) to employees of the institution concerned referred to in this subsection and their bona fide guests, for consumption on those premises;
- (c) on behalf of the principal of an educational institution in a restaurant used for the training of persons in catering services on premises occupied, controlled or maintained by the institution concerned, for consumption in that restaurant;
- (d) if that person is a bona fide museum and is licensed as a special customs and excise warehouse in terms of Item 810.20.10 of Schedule 8 of the Customs and Excise Act, 1964 (Act 91 of 1964);
- (e) if that person is a collector of wine and that liquor consists of his or her collection of wine or any part thereof; or
- (f) if that person is a licensed auctioneer acting on behalf of a bona fide cultural or welfare organisation, an educational institution, an insurer or a person contemplated in section 124 (1) (b).

(2) A declaration issued under subsection (1) shall be subject to such conditions set out therein as the Board may in its discretion impose.

(3) The Board may at any time after the issue of a declaration under subsection (1) by a notice delivered to the person named in the declaration concerned -

- (a) impose such conditions or further conditions as may be set out in the notice, to which the notice shall be subject;
- (b) withdraw or amend any condition imposed by it under this section; or

- (c) withdraw or amend the declaration.

## **126 Exemption from the provisions of Act**

- (1) This Act shall not apply to -
  - (a) an officer as defined in section 1 of the Customs and Excise Act, 1964 (Act 91 of 1964), in the performance of his or her functions as such;
  - (b) a sheriff or deputy sheriff or any other officer acting in terms of an order of a court, judge or magistrate, in the performance of his or her functions as such;
  - (c) a person selling liquor under the authority of the Minister of Defence -
    - (i) to members of the South African National Defence Force on the premises of a trading institution contemplated in section 149 of the Defence Act, 1957 (Act 44 of 1957), for consumption off those premises;
    - (ii) to such members and their bona fide guests on the premises of a club or mess so contemplated, for consumption on those premises; or
    - (iii) in connection with a base, camp, station or ship for any part of the South African National Defence Force;
  - (d) a person selling liquor under the authority of the Minister concerned on premises under the control of the South African Police Service, the Department of Correctional Services or the National Intelligence Service, to members of the institution concerned and their bona fide guests;
  - (e) the convenor of a bona fide wine-tasting function, with regard to the sale of wine in quantities of less than 200 millilitres at that function lasting not more than two hours, for consumption at the function;
  - (f) a person, with regard to the sale of any spirituous or distilled perfumery or medicated spirit, which perfumery or spirit is not methylated spirit; or
  - (g) the manufacturer of sweets containing more than two per cent by mass of alcohol and manufactured in the Republic, with regard to the sale of those sweets to the holder of a licence or an exempted person.

## **CHAPTER 9 OFFENCES AND PENALTIES [sec 127-138]**

### **127 Offences in general**

It is an offence for any person to -

- (a) sell any liquor otherwise than under a licence or permit issued in terms of this Act or an exemption granted under section 123 or 124;
- (b) be intoxicated, violent or disorderly on any premises, whether licensed or not, on which liquor may by virtue of this Act be sold;
- (c) be intoxicated in or on or near any public place, including but not limited to any road, street, lane, thoroughfare, square, park, market, shop, warehouse or public garage, etc;
- (d) consume liquor in or on or near any public place, including a motor vehicle driven on a public road or parked in a public place;
- (e) introduce, possess or consume any liquor on a sports ground, or any part thereof, to which the public has or is granted access, except on any licensed premises situated on the sports ground concerned;
- (f) falsely represent himself or herself or any other person to belong or not to belong to a category of persons in order to persuade the licensee, or his or her agent or employee, to sell or supply liquor to him or her or that other person which may by virtue of this Act not be sold or supplied to a person who does not belong or belongs to that category;
- (g) supply liquor to a person in his or her employ as wages or remuneration or as a supplement therefore;
- (h) sell or supply any illegal or counterfeit liquor; or
- (i) contravene any provision of this Act

## **128 Offences regarding information**

It is an offence to submit or provide any information which is false or misleading or any false document or document which purports to be but is not a true copy of an original document in relation to any application, objection, representations, reply to any objection or representations or complaint or request in terms of this Act.

## **129 Offences regarding meetings of Board**

It is an offence to -

- (a) fail to appear before the Board on the date and at the time and place set out in any notice or summons;



- (b) appear before the Board but without the leave of the Chairperson fail to remain in attendance at the meeting concerned until the conclusion thereof;
- (c) refuse to give evidence or produce any document or book, having been called upon by the Chairperson or the Board to give evidence;
- (d) refuse to take the oath or make the affirmation, having been required by the chairperson or the board to give evidence under oath or after the making of an affirmation;

[Para (d) substituted by sec 19 of Act 9 of 2003 wef 16 January 2004.]

- (e) wilfully interrupt the proceedings at a meeting of the Board or wilfully hinder or obstruct the Board or any member thereof in the performance of his or her functions at the meeting.

### **130 Offences regarding inspectors and police officers**

It is an offence for any person to -

- (a) falsely hold himself or herself out to be or impersonate an inspector or police officer;
- (b) refuse or fail to comply with any lawful demand, order or requirement of an inspector or police officer;
- (c) hinder, obstruct or interfere with an inspector or police officer in the exercise of his or her powers;
- (d) refuse to grant an inspector access to land or premises to which the inspector is duly authorised to have access;
- (e) fail to comply with a compliance notice issued in terms of this Act;
- (f) act contrary to a warrant issued in terms of this Act; or
- (g) fail or refuse to provide an inspector with a document or information that the person is required to provide under this Act.

### **131 Offences regarding liquor trade**

It is an offence for any person to enter into or negotiate an agreement or business arrangement prohibited by or contemplated in section 37, unless otherwise approved by the Member of the Executive Council.

### **132 Offences by licensees in general**

It is an offence by a licensee to -

- (a) fail or refuse to comply with any condition of a licence or contravene any provision of this Act;
- (b) keep the licensed premises open for the sale, supply or consumption of liquor or sell or supply any liquor at a time when the sale of liquor is not permitted in terms of the licence and this Act;
- (c) sell or supply liquor in a place where the sale or supply of liquor is not permitted in terms of the licence;
- (d) fail to keep any record which he or she is by virtue of this Act required to keep, or keep such a record in an inadequate or improper manner,
- (e) fail or refuse to comply with any notice issued in terms of this Act or any direction or order of the Board;
- (f) allow drunkenness or licentious conduct on the licensed premises;
- (g) sell or supply liquor to an intoxicated person or a person under the age of 18 years, and
- (h) in respect of an off-consumption licence, open or allow to be opened on the licensed premises any receptacle containing liquor sold by him or her.

### **133 Penalties**

Any person who is guilty of an offence in terms of this Act, shall on conviction be liable to a fine not exceeding R100 000,00 or to imprisonment for a period not exceeding ten (10) years or both such fine and imprisonment.

[Sec 133 substituted by sec 20 of Act 9 of 2003 wef 16 January 2004.]

## **EVIDENTIAL AND PROCEDURAL MATTERS**

### **134 Proof of sale of liquor**

Evidence in any criminal proceedings that any person who is not a licensee -

- (a) had on or near his or her premises any signboard or notice purporting that he or she holds a licence;
- (b) was in occupation or control of premises fitted out with a bar or similar place containing bottles, casks or other receptacles so displayed as to induce a reasonable suspicion that liquor was sold thereon;

- (c) had on his or her premises more liquor than was reasonably required for his or her personal use and for the use of any person residing thereon; or
- (d) bought or procured or had in his or her possession or custody or under his or her control more liquor than was reasonably necessary for consumption by himself or herself, his or her family or his or her bona fide employees or guests, shall be prima facie proof of the sale of liquor by the first-mentioned person.

### **135 Proof that person belongs to particular category**

(1) If it is alleged in any prosecution for an offence in terms of this Act that any person is under a particular age or belongs to any other particular category, evidence that the person concerned is apparently under that age or that he or she is regarded as belonging to that other category or by his or her appearance belongs thereto, as the case may be, shall be prima facie proof of that fact.

(2) If in addition the court is satisfied from personal observation that that person is apparently under the age or by his or her appearance belongs to that other category, it shall announce and record that fact, but that announcement and recording shall not prevent the accused from proving that that person, although having the appearance of, is not in fact, a person under that age or belonging to that other category, as the case may be.

### **136 Proof of licences and certain conditions**

A document which purports to be a copy of a licence shall on its mere production in any judicial proceedings be prima facie proof of the licence, and any condition recorded thereon shall, unless the contrary is proved, be deemed to be a condition imposed under this Act in respect of the licence.

### **137 Presumption of sale from nature of transactions**

If it is alleged in any prosecution for an offence in terms of this Act that an unlawful sale of liquor took place, a sale of liquor shall be presumed to have taken place unless the contrary is proven, that money passed, that a transaction in the nature of a sale actually took place.

### **138 Presumption regarding prohibited concoctions and drinks**

If it is proved in any prosecution for an offence in terms of section 127(i) that the accused manufactured, had in his or her possession or custody or under his or her control, or consumed or sold, supplied or gave to any person liquid which had or has the appearance of a concoction or drink referred to in section 123(1) and in the charge, it shall be presumed, unless the contrary is proved, that the liquid was or is that concoction or drink.

[Sec 138 substituted by sec 21 of Act 9 of 2003 wef 16 January 2004.]

**CHAPTER 10**  
**MISCELLANEOUS MATTERS [sec 139-144]**

**139 Copies of records and other documents**

The Board shall, on application and against payment of the prescribed fees, furnish to any interested person copies of any licence and the conditions thereto or of any application which is being kept or retained by it.

**140 Condonation of defective applications**

The Board may, when dealing with or considering the application, condone any defect if it is of the opinion that there has been substantial compliance with this Act and that the condonation is not likely to prejudice any person.

**141 Regulations**

- (1) The Member of the Executive Council may make regulations regarding -
- (a) the applications made in terms of this Act and objections or representations in relation thereto;
  - (b) the form in which and the manner in which any application, objection, representations or complaint in terms of this Act is or are to be made;
  - (c) the documents which are to be lodged in support of any application in terms of this Act, and the form in which and the manner in which those documents are to be lodged;
  - (d) the lodging of replies to any objection or representations in terms of this Act;
  - (e) the maximum number of licences of or in which any person may be the holder or may have any interest;
  - (f) the furnishing of any information for the purpose of any record or other document required to be kept by virtue of this Act;
  - (g) the retention and destruction of any record or other document required to be kept or retained by virtue of this Act;
  - (h) the payment of fees in respect of any application made in terms of this Act;
  - (i) the payment of fees in respect of the issue of any licence, including the period within which such fees are to be paid;

- (j) the payment of fees in respect of the transfer of any licence, including the period within which such fees are to be paid;
- (k) the payment of annual licence fees in respect of any licence;
- (l) the trading hours in respect of any licences;
- (m) a phased in approach, whereby Shebeens would be given an opportunity to comply with the Act;
- (n) the form of licences, declarations, notices, summonses, consents, appointments, directions, determinations, approvals, authorities and other documents in terms of this Act; and
- (o) any matter which in terms of this Act is required or permitted to be prescribed;
- (p) in general, any matter in respect of which he or she thinks it necessary or expedient to make regulations for achieving the objects of this Act.

(2) A regulation made under this section may for a contravention thereof or failure to comply therewith, prescribe a penalty which shall not exceed a fine of R10 000 or imprisonment for a period of twelve (12) months or both such fine and imprisonment.

(3) Different regulations may be made under this section in respect of different kinds of licences, licences of the same kind having different common characteristics, different categories of persons or different areas.

## **TRANSITIONAL PROVISIONS**

### **142 Continuation of pending matters**

(1) Any application made before the date of commencement of this Act and not disposed of on that date, shall be continued and disposed of as if that law still applies.

(2) In the application of subsection (1) of section 12 of the Interpretation Act, 1957 (Act 33 of 1957), a reference to the Board in a law referred to in subsection (1) shall be construed as a reference to the Board as constituted in terms of this Act.

### **143 Conversion of existing licenses**

(1) Subject to subsections (2), (3) and (5), any authorization, permit or licence issued in terms of the Liquor Act, 1989 (Act no 27 of 1989) to engage in the retail sale, micro-manufacture or wholesale of liquor or methylated spirits which was valid immediately before the date of commencement of this Act, shall remain valid.

(2) The holder of an authorization, permit or licence contemplated in subsection

(1), shall within the period determined by the Member of the Executive Council by notice in the *Provincial Gazette*, submit such authorization, permit or licence to the Board for conversion into an authorization, permit or licence under this Act.

(3) A conversion contemplated in subsection (2) shall be made on the same terms and conditions and for the remaining duration of the original authorization, permit or licence.

(4) A converted authorization, permit or licence is deemed to have been issued in terms of this Act.

(5) If a licensee fails to submit his or her licence as contemplated in subsection (2), the licence shall lapse.

(6) The Member of the Executive Council may prescribe fees for a conversion.

[Sec 143 substituted by sec 22(a) and (b) of Act 9 of 2003 wef 16 January 2004.]

#### **144 Short title and commencement**

(1) This Act is called the Gauteng Liquor Act, 2003 and comes into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.

[Subsec (1) substituted by sec 23 of Act 9 of 2003 wef 16 January 2004.]

(2) Different dates may be so fixed in respect of different provisions of this Act.

#### **[Act 5 of 2003]BLUE IQ INVESTMENT HOLDINGS (PROPRIETARY) LIMITED ACT 5 OF 2003**

[ASSENTED TO: NO DATE SUPPLIED]

[DATE OF COMMENCEMENT: 17 OCTOBER 2003]

*(English text signed by the Premier)*

**To provide for the establishment of a holding company known as Blue IQ Investment Holdings (Proprietary) Limited to manage identified projects through various commercial enterprises; to determine its objectives; to provide for the holding of shares in the Company; to provide for the disposal of shares and interest in the commercial enterprises; to provide for funding of the Company; to provide for the management of the Company; to provide for the transfer of assets, liabilities and obligations to the Company; to provide for listing of the commercial enterprises; to provide for regulations; and to provide for matters connected therewith.**

**ACT**

#### **1 Definitions**

In this Act, unless the context otherwise indicates:

**"Board of Directors"** means the Board of Directors as contemplated in section 8 of this Act;

**"commercial enterprises"** include companies, close corporations, public private partnerships, trading accounts; joint ventures; agreements, partnerships and similar business undertakings;

**"Companies Act"** means the Companies Act, 1973 (Act 61 of 1973);

**"Company"** means Blue IQ Investment Holdings (Proprietary) Limited as contemplated in section 2 of this Act;

**"Constitution"** means the Constitution of the Republic of South Africa Act, 1996 (Act 108 of 1996);

**"Executive Council"** means the Executive Council of the Province as constituted in terms of section 125 of the Constitution;

**"Gauteng Provincial Government"** means the government of the Province and Provincial has a corresponding meaning;

**"identified projects"** means the following projects identified by the Gauteng Provincial Government - the Innovation Hub, Gauteng Automotive Cluster, Constitution Hill, Newtown Cultural Precinct; Gautrain Rapid Rail Link, City Deep Transport and Logistics Hub, Dinokeng, Cradle of Humankind World Heritage Site; Wadeville Alrode Industrial Corridor, Johannesburg International Airport Industrial Development Zone; Renewal of Kliptown, and includes amendment of the scope of these projects and any future projects that are approved by the MEC;

**"MEC"** means the Member of Executive Council responsible for Economic Affairs in the Province;

**"Province"** means the Gauteng Province as contemplated in Section 103 of the Constitution and **"Provincial"** has a corresponding meaning;

**"Public Finance Management Act"** means the Public Finance Management Act 1999 (Act 1 of 1999); and

**"This Act"** includes regulations made thereunder.

## **2 Establishment of Blue IQ Investment Holdings (Proprietary) Limited**

(1) There is established a juristic person to be called Blue IQ Investment Holdings

(Proprietary) Limited.

(2) The MEC is empowered to do all things necessary to have Blue IQ Investment Holdings (Proprietary) Limited incorporated and registered in terms of the Companies Act.

(3) The MEC may delegate in writing the powers to sign the documents that are required for the registration of the Company.

(4) The Memorandum of Association of the Company must provide that the Company will not have the power to alter the business and objects of the Company without the approval of the MEC.

### **3 Objects of the Company**

(1) The objects of the Company are to-

- (a) undertake or invest in Identified projects; and
- (b) enable increased private sector investment, through the utilization of legally recognized commercial enterprises.

(2) The Company may from time to time dispose of its shares or interest in the commercial enterprises.

### **4 Share Capital**

Share capital of the Company shall consist of R4 000 (four thousand Rand) divided into 4 000 (four thousand) ordinary shares of R1,00 (one rand) each and the initial share capital of the company shall consist of 100 (one hundred shares).

### **5 Shareholding in the Company**

(1) The Gauteng Provincial Government is the only Shareholder of the Company.

(2) The MEC exercises the powers and duties of the Gauteng Provincial Government as Shareholder of the Company.

### **6 Shareholding/Interest in Commercial Enterprises**

If the Company acquires, transfers, cedes, sells or otherwise disposes of its shares or interest in the commercial enterprises, then it must obtain prior approval of the MEC and on such terms and conditions as the MEC approves.

### **7 Funding**



- (1) The funding of the Company comprises of-
- (a) money appropriated to it by the Provincial Legislature; and
  - (b) any other proceeds realized through the commercial enterprises.

## **8 Management of the Company**

- (1) A Board of Directors manages the Company.
- (2) The MEC must appoint the Board of Directors consisting of a minimum of 3 (three) and maximum of 8 (eight) members.
- (3) The MEC must appoint the Chairperson of the Board and the Chief Executive Officer of the Company.

## **9 List of Commercial Enterprises**

- (1) The commercial enterprises, nature thereof and the Company's shareholding or interest expressed as a percentage therein are as contained in columns 1, 2 and 3 of the Schedule respectively.
- (2) Upon conclusion of reporting in terms of the Public Finance Management Act, the MEC must by notice in the *Provincial Gazette* publish a schedule annually in which any changes or additions to the commercial enterprises, the nature thereof and the Company's shareholding or interest therein are reflected.

## **10 Effect of Establishment**

Upon incorporation of the Company, all assets, rights, liabilities or obligations acquired or incurred by the Gauteng Provincial Government in pursuance of the identified projects before the establishment of the Company are deemed to be the assets, rights, liabilities or obligations acquired or incurred by the Company.

## **11 Regulations**

The MEC may make regulations concerning any matter that the MEC deems necessary and expedient in order to achieve the objects of this Act.

## **12 Short Title**

This Act is called the Blue IQ Investment Holdings (Proprietary) Limited Act.

### **Schedule**

**COLUMN 1:**  
**NAME OF COMMERCIAL**

**COLUMN 2:**

**COLUMN 3:**  
**% OF SHAREHOLDING/**

| <b>ENTERPRISE</b>  | <b>NATURE/TYPE</b>  | <b>INTEREST</b>  |
|--|---|------------------|
| Innovation Hub management Company (Pty) Ltd                              | Equity investment   | 50%              |
| Blue catalyst (Pty) Ltd  | Equity investment   | 100%             |
| AIDC Development Company (Pty) Ltd                                       | Equity investment   | 60%              |
| Supplier Park Development Company (Pty) Ltd                              | Equity investment   | 100%             |
| Greater Newtown Development Company (Pty) Ltd                            | Equity investment   | 77%              |
| JIA Development Company (to be registered in terms of the Companies Act) | Equity investment   | To be determined |
| Metro Mall (Pty) Ltd   | Equity investment   | 69.6%            |
| Constitution Hill Development Company (Pty) Ltd                          | Equity investment   | 86,63%           |
| Dinokeng   | Trading account with Department of Agricultural, Conservation, Environment & Land Affairs |                  |
| Cradle of Humankind  | Trading account with Department of Agricultural, Conservation, Environment & Land Affairs |                  |
| Kliptown   | Project Management Agreement with Johannesburg Development Agency                         |                  |
| Cleveland Road Link  | Project Management Agreement with Johannesburg Roads Agency                               |                  |
| IDZ roads  | Project Management Agreement with GauTrans  |                  |
| Nelson Mandela bridge and M2 off ramp                                    | Project Management Agreement with South African National Roads Agency Limited             |                  |
| Wadeville Alrode   | Project Management Agreement with Ekurhuleni Municipality                                 |                  |