

PRESENTATION ON AMENDMENTS TO LIQUOR PRODUCTS ACT, 1989 (ACT 60 OF 1989

LP AMENDMENT BILL – SUBMISSION TO PARLIAMENT



**agriculture,
forestry & fisheries**

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

OUTLINE

- Introduction: Current Scope of the Act
- Background to the Amendment of the Act
- Process and Consultation
- Constitutional and Other Legal Implications
- Proposed Amendments
- Unintended Consequences and Mitigation
- Internal Governance and Current Status
- Financial Implications
- Recommendations



INTRODUCITON: CURRENT SCOPE OF THE LP ACT

The Liquor Products Act, 1989 (Act No. 60 of 1989) (the LP Act) provides for control over:

- the sale and production for sale of certain alcoholic products (with an alcohol content of **more than 1 %**);
- the composition and properties of such products;
- the use of certain particulars in connection with the sale of such products;
- the establishment of schemes (e.g. Wine of origin scheme that protects geographical indications (GI's) for wine; and
- for control over the import and export of certain alcoholic products.

EXCLUDES beer and medicine.



BACKGROUND TO THE AMENDMENT OF THE LP ACT

- The Liquor Products Amendment Act of 2008 was published as an interim measure to address urgent amendments only – the LP Amendment Act was approved by Parliament and promulgated on 15 May 2009;
- Main aim of the amendment at the time was to amend the composition of the Wine and Spirit Board, to make it more representative;
- to make provision for international obligations of the Department in terms of the EU/SA Wines and Spirit Agreement; and
- During the Parliamentary process, the Portfolio Committee and the late Deputy Minister, Dirk du Toit, instructed a full review of the Act to include beer, due to beer being unregulated.



PROCESS AND CONSULTATION

- Liquor Products Advisory Forum (LPAF) was established and chaired by the DAFF;
- Representation on the LPAF was inclusive as possible;
- First meeting in 2009, meet on a quarterly basis, conclusion of consultations in 2011_2012, including various subcommittee meetings;
- Extensive consultation was done with role players(list available), including all government departments (incl. DoH, DTI, SAPS);
- Draft LP Bill based on consensus reached at LPAF meetings;
- Where consensus could not be obtained, e.g. sugar fermented beverages; further restrictions will be considered in Regulations e.g limit maximum alcohol, restrict packaging (no plastic/ foilbag containers) to minimise impact on vulnerable communities;



PROCESS AND CONSULTATION....

- Sugar fermented beverages (SFB's), so called “ales” are being sold unregulated at high alcohol percentage (e.g. 14 % vol) and is having a major impact on vulnerable communities;
- Another alternative to SFB's is to exclude this category from the LP Bill, but then existing products from many companies will be banned, which have been sold for more than 10 years due to “loophole” in the Liquor Act. DAFF at risk of court action due to existing rights being infringed for products which do not hold any food safety risks; and
- Additional measures of protecting vulnerable communities to be considered in the Regulations: carbonation (adding of CO₂), prescribing type of container (no plastic/“papsak”) and prescribing max volume (only small volumes, excl. 2 or 5 liters).



CONSTITUTIONAL AND OTHER LEGAL IMPLICATIONS

- Liquor Products Act was send to State Law Advisors for an opinion in 2010/11, again in 2013 after conclusion of the consultation process and for final verification in 2016;
- State Law advisors clarified that the definition for beer, traditional African beer and other fermented beverages in the Liquor Products Amendment Bill, will not simultaneously update/amend the definitions in the Liquor Acts of the 9 provinces;
- To ensure harmonization between the various Acts, the amendment of the beer definitions in the provincial Liquor Acts, will have to be handled as a separate, but parallel process; and
- The State Law Advisors indicated their agreement with the content of the LP Bill and have prepared the Bill to be submitted to Parliament.



PROPOSED AMENDMENTS

- **Inclusion of beer, contemporary beer, traditional African Beer and other fermented beverages in the Act** – this aims to address a loophole in the Liquor Act, Act 27 of 1989, which allows any liquor product, labeled as beer or ale, to be manufactured and sold. This will also address the proliferation and uncontrolled sale of SFB's and other concoctions (*Amendment of Section 6*).
- **Reduce the powers of the Wine and Spirit Board** – amend the advisory function of the Board to only relate to schemes administered by the Board. Currently the Board can advise on all liquor products, whilst its current mandate is very limited and only relates to the certification of wine and brandy for geographical origin. This is an oversight in the Act, which must be rectified. All other liquor products are controlled by DAFF (*Amend Section 2*).



PROPOSED AMENDMENTS....

- **Lowering of the minimum alcohol content** of a liquor product to more than 0.5 % (currently more than 1.0 %) – this amendment aims to bring the scope of the Liquor Products Act in line with other international and national legislation, e.g. Foodstuffs, Cosmetics and Disinfectants Act to ensure that no grey areas exist between the two sets of legislation where liquor products are left unregulated as a result (*Amendment of Section 4*).
- **Deletion of “specially authorized liquors”** – these alcoholic beverages will be accommodated in the Regulations as classes of an “other fermented alcoholic beverage”. Currently these are mead, sacramental alcoholic beverage and orange juice and cane sugar fermented alcoholic beverage. Severe and unconstitutional limitations apply to these products (*Amendment of Section 10*).



PROPOSED AMENDMENTS....

- **Authorise the Minister to outsource control over the exportation** of liquor products – this will bring the Liquor Products Act in line with the requirements of the Agricultural Product Standards Act and ensure harmonization between the two Acts (*Amendment of Section 17*).
- **Authorise the Minister to designate a laboratory** rather than a natural person as currently provided for in the Act - this is easier to implement and maintain in practice (*Amendment of Section 20*).
- **Gauging (not “quantity”) of tanks** – a mistake was made when the previous LP Amendment Act was promulgated – this must be rectified in the new amendment Bill (*Amendment of Section 27 of the principal Act*).



PROPOSED AMENDMENTS

- **Amendment of other National Acts** – The inclusion of a definition for beer, contemporary beer, traditional African beer and other fermented beverages will require that the definitions in other Acts (e.g. National Liquor Acts) to be amended in line with the definitions as captured under the Liquor Products Act (*Amendment of laws at the end of the LP Bill*).
- **References to other Acts updated** and outdated provisions to be deleted, including updating the use of gender-equal terminology (*Amendment throughout the principal Act*).



UNINTENDED CONSEQUENCES AND MITIGATION

- *Regulation of powders* (mixture of ginger, sugar and yeast) to which water were added to form a liquor, were sold in cafes - misused by children – complaints were received - LP amendment Bill of May 2009 brought “powder liquor” into the ambit of the LPA to ensure that it can be controlled
- *Beer will now be brought into the scope of the LPA* – unintended consequence is that beer kits will be regulated. Mainly used for homebrews, the content there-of varies - it will be impossible to define kits and to monitor and control the manufacturing there-of.
- *Mitigation* – a section will have to be brought into the Act to allow the Minister to grant exemption by regulation from the prohibition as defined under Section 1(b) – a separate regulation to be drafted to exempt beer kits from being subject to control.



INTERNAL GOVERNANCE AND CURRENT STATUS

- MINEXCO informed in 2012 of the LP Amendment Bill/process;
- LP Bill was published in the government gazette for public comment on 8 June 2012 (60 days comment period);
- Public comments were summarized and included in the Bill;
- LP Bill submitted to State Law Advisors in 2013 for final approval;
- LP Bill approved by EXCO on 18 August 2014;
- SEIAS signoff certificate issued on 3 Nov 2015
- LP Bill approved by Cabinet on 1 Feb 2016
- Final certificate issued by State Law Advisors on 20 April 2016
- Intent to introduce LP Bill to Parliament published on 1 July 2016
- Fast tracking of the LP Bill is a priority to ensuring addressing of the proliferation of “ales” and impact on vulnerable communities.



THANK YOU



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