



## agriculture, forestry & fisheries

Department:  
Agriculture, Forestry and Fisheries  
REPUBLIC OF SOUTH AFRICA

### RESPONSE TO COMMENTS ON THE LIQUOR PRODUCTS AMENDMENT BILL

#### A INTRODUCTION

The Liquor Products Act as it stands enshrines basic principles for the various broad categories of liquor products, leaving the details to subordinate legislation. This was done because of fast technical and product innovation in the industry concerned, locally and on the international front. The Amendment Bill keeps to this standard to ensure flexibility and avoid stifling innovation.

The structure of the act (also as proposed to be amended) in this regard can be set out as follows:

- a) Specifies basic, **fundamental requirements** for each category of liquor product, as is internationally accepted. E.g. wine must be made by fermenting grape juice. This provides legal certainty not only to members of the industry concerned, but also to our trading partner countries and the public at large.
- b) Provides for the prescription of **different classes** within each category of liquor product, each class having its own requirements. E.g. within the wine category one gets dry wine, sweet wine, late harvest wine, etcetera. This is done in subordinate legislation for faster response times to make sure progression and innovation are not hampered. Of course, always subject to the fundamental requirements as enshrined in the act.
- c) Determines that only **prescribed substances** may be added or removed from liquor products and that a liquor product may not contain a prescribed substance to a greater degree than that prescribed. This is to ensure human **health and safety**. E.g. the amount of sulphur dioxide in a wine is strictly limited. Worldwide, this limit has come down substantially over time. Being a limit in subordinate legislation, South Africa could react timeously.

#### B BREWSTER'S CRAFT PTY LTD

1. Beer can only be flavoured with hops or hop products. Herbs should be included as a possible flavouring.

This aspect was considered in detail during consultations, including discussions with the Craft Beer Association. As a result, the proposed provision clearly says, "except where provided otherwise by regulation" and "in accordance with the prescribed manner or conditions". Thus, should the need arise to use herbs instead of or in combination with hops, it can be accommodated. Table 6 of the Regulations currently provides for the manner and conditions of all additives and this will have to be amended to include herbs specifically for beer. All such amendments will be published for comment. The statement that the proposed amendment will have the effect that beer can only be flavoured with hops or hop products, is not correct.

- 2. Beer must be made in such a manner that at least 35 % of the fermentable extract of the wort is derived from malted barley or malted wheat. This should be "at least 50 %" to prevent use of liquid sugar at high concentrations making a quick fermentable and high alcoholic product.**

Again, the proposed provision concerned clearly starts off with, "except where expressly provided otherwise by regulation". Thus, depending on each class of beer the 35 % requirement could be higher or lower. The 35 % is a base, in line with international standards, but could vary depending on the class of beer – the USA, for example, has no less than 42 classes of beer.

The requirements for each class of beer, which will reside in subordinate legislation, are to be consulted with all interested parties, but it is highly unlikely that the addition of liquid sugar will be allowed to that extent, if at all.

- 3. Cereals used should not be limited to only malted barley and malted wheat. Also provide for sorghum, millet, rye, rice, cassava, etcetera.**

As with the allowed flavourings as set out in paragraph B1 above, this aspect was exhaustively discussed during the consultation phase, which was directly responsible for the addition of the qualifier, "except where expressly provided otherwise by regulation". Thus, provision is made to accommodate cereals other than barley and wheat.

- 4. Include a maximum alcohol content for beer. Differentiate between non-alcoholic, low alcohol, Lite and Light beers.**

These will be addressed in the regulations, prescribing the requirements for each class of beer. Including minimum and/or maximum alcohol content, as is the case with all current liquor products. This ensures flexibility as required by innovation and consumer demand.

## **C GRAIN SOUTH AFRICA**

- 1. Grain sorghum should not be excluded as raw material for spirit and beer production.**

The addition of sorghum to other classes of beer can be accommodated under the proposed provision, "except where provided otherwise by regulation" and "in accordance with the prescribed manner or conditions" that has been included under Section 6A. The manner and conditions of all additives as prescribed by Table 6 of the Regulations can be amended to allow for the addition of grain sorghum to beer if role players are in agreement with the suggestion. This will be published for comment.

As to spirits, the current regulations (see Regulation 9) already make provision for the use of grain sorghum as a raw material.

## **D MR ELCORT MATLALA**

- 1. The Wine and Spirit Board must be regulated by the Minister to ensure it does not have excessive power.**

The members of the Wine and Spirit Board (proposed to be renamed to the "Wine Certification Authority") are appointed by the Minister of Agriculture, Forestry and Fisheries and he has oversight over the Board. Three representatives of the Department are also appointed to the Board by the Minister in terms of Section 2(a)(ii) and has permanent seating. The powers of the Board are set out in Section 2 of the Liquor Products Act, beyond which it cannot operate. The scope of the powers and activities of the Board only relates to wine certification and not to any other liquor products.

- 2. Traditional African beer must be allowed and provided for in the Bill.**

The provision for Traditional African beer is one of the main objects of the Bill.

- 3. Power to the Minister to issue export certificates.**

In terms of Section 17 of the Act, the Minister already has the power to make regulations with regards to export certification. The amendment, however, aims to make provision for the Minister to outsource export certification if required and to align the requirements of the Act with that of the Agricultural Products Standards Act that already allows for the outsourcing of export certification.

## **E DANIE CRONJE ATTORNEYS**

- 1. The proposed lowering of alcohol content, which qualifies an alcohol beverage as a liquor product, to 0.5 % from 1.0 % will have unintended consequences for certain retailers.**

Internationally, 0.5 % has become the standard and, thus, the proposed amendment. However, the comment by Danie Cronje seems like a valid concern, as this is an unintended consequence of broadening the scope of the LP Act to include liquor products with an alcohol content between 0.5 and 1%. Although it is not likely that liquor products at this low alcohol level will



contribute to social abuse or have any potentially harmful effect, it still needs to be included under the LP Act to ensure harmonization with national and international standards.

To minimize the unintended consequence in terms of licensing, the concern can be addressed in the Schedule (Laws Amended) to the Bill for the Liquor Act (59 of 2003), changing the definition for "liquor" further as follows:

**"liquor" means-**

- (a) a liquor product, as defined in section 1 of the Liquor Products Act, 1989 (Act No. 60 of 1989), which has an alcohol content of more than one per cent; or
- (b) **[beer or traditional African beer; or**
- (c)]any other substance or drink declared to be liquor under section 42(2)(a);"

## **2. Compulsory registration of producers, blenders or fillers.**

As acknowledged by Danie Cronje Attorneys, this proposal is to enhance traceability and law enforcement. It allows the Minister to make such registration compulsory via subordinate legislation. The mobile bottlers are indeed problematic at the moment, as they do not take any responsibility with regards to the liquor product that they have bottled. They will need to be registered to ensure accountability and traceability.

Such regulations will however not come into operation without prior consultation and publication for comments as required by the Promotion of Administrative Justice Act.

## **F SOUTH AFRICAN LIQUOR BRAND OWNERS ASSOCIATION (SALBA)**

### **1. Proposed amendment of Section 19 of the Act.**

SALBA has requested that Section 19 of the Act be amended in line with existing legislation under Section 16 of the Act. DAFF Inspection Services are struggling with enforcement on the local market due to a requirement that the responsible seller or producer of a non compliant liquor product must be taken to court if a section of the Liquor Products Act is contravened.

This is however not the case for imported liquor products, the latter can be removed from the Republic of SA at the expense of the importer, or be treated or dealt with to ensure compliance or forfeited to the state for destruction.

This a very valid request and also supported by DAFF to ensure more effective enforcement of the Act. Currently enforcement of the Act is very difficult due to resource constraints in terms of personnel and finances. If a non compliant liquor product is found in the local market, then according to Section 19 of the Act, the producer must be taken to court. This process is extremely lengthy,

costly, time consuming and ineffective. In the interim, however, the producer continues to sell these non-compliant liquor products that may be a health and safety risk, be a low quality liquor product or have social implications.

The proposal is that the focus should be on the non-compliant liquor product and that provision is made that it can be dealt with in the following way:

- at the option of the producer or person responsible for the liquor product, the liquor product concerned can be destroyed.

This will provide some flexibility in terms of enforcement in ensuring that a non compliant liquor product can immediately be removed from the market place and therefore ensuring more effective enforcement of the Liquor Products Act and protection of the consumer.

## **G SOUTH AFRICAN BREWERIES (PROPRIETARY LIMITED)**

### **1. General reservation of rights and Caveat relating to matters to be prescribed in the unpublished regulations - beer definitions under Section 6**

SAB was part of the LPA Forum since 2009 and was in agreement with the draft LP Amendment Bill and the beer definitions at the time. SAB was instrumental in drafting concept definitions for beer and traditional African beer that will be published for comment once the LP amendment Bill has been approved by Parliament. SAB will be fully consulted in finalizing the draft regulations prior to publication for comment.

It should be noted that the provisions of the Bill will only come into operation at the same time and date as the relevant subordinate legislation. Without the subordinate legislation, the provisions of the Bill cannot come into effect. This is standard practice.

### **2. Definition of class designation - Section 1 and Beer definitions under Section 6.**

SAB has requested that the prescribed class designation for the permissible alternative designations in the draft amendment to the regulations must be published for comment.

Table 10 of the Regulations currently prescribes the permissible alternative class designations for all the categories of liquor products. This will be amended to include the alternative class designations as agreed with industry stakeholder members in the LPAF (e.g. Ale, Lager, Pilsner, Stout, Porter, Marzen, Draft and Weiss beer, etc.). This will be published for comment as part of the consultation process.

### **3. Definition of "specially authorised liquor" and deletion of Section 10.**



SAB has requested that the category for "specially authorised liquor" under Section 10 of the Act not be deleted as they want to maintain this section to provide for innovation going forward, without having to amend the Act again.

The whole structure of the Act is designed to be flexible and foster innovation. "Specially authorized liquor" will be fully accommodated under the new category "Other fermented beverages", which also provides for all possible future developments, without the unconstitutional limitation of the "Specially authorized liquor" category.

#### **4. Section 6 - Alcoholic Fruit Beverages - no amendments.**

SAB is incorrect in their statement that no amendment has been made to section 6. This section has specifically been amended by the insertion of the wording: reconstituted juice or a mixture of juice and reconstituted juice to allow the use of concentrate or reconstituted juice, as previously only the juice from fresh fruit could be used.

#### **5. Alignment between the Liquor Products Act and the Customs and Excise Act.**

DAFF is in constant liaison with Treasury and SARS with regards to alignment of the acts. SARS and Treasury were consulted at the time of drafting the beer definition and was in agreement. It should be noted that only a minimum of 35 % of malted barley and malted wheat is required in terms of the proposed definition. SARS has subsequently introduced a tariff line for malt beer with a minimum of 50 % malt.

It should be noted that Brewster's Craft (Pty) Ltd in their comment has requested that the percentage of fermentable extract should be increased from 35 % to 50 % to prevent the use of liquid sugar at high concentrations, which makes quick fermentable and highly alcoholic products that is cheaper to produce. In addition, SARS has set a minimum requirement for malt beer at 50 %. If alignment of malt content are to be considered, the minimum percentage of the LP Act should as a consequence be raised to 50 % rather than requesting lowering to 35 % in the Customs and Excise Act. This was however the consensus minimum malt percentage reached at the LPAF and at the moment, nothing prevents a beer producer to have a higher malt content if they so require.

#### **6. Amendment of Section 20 - methodology of analyzing samples.**

Section 20 (2) already makes provision for the proposal by SAB in broad terms. The detail with regards to the technical requirements of the analyses will be prescribed in the regulations to allow for flexibility as and when the type of analyses changes and to make provision for new technology and analyses techniques.

#### **7. Amendment of Section 27 - limitation of powers of the Minister and obligation to consult.**

The proposal by SAB to amend Section 27 of the Act will not only limit legislative powers, but makes Parliament subject to private standards. Consultation is a constitutional requirement, as is further enhanced by the obligations contained in the Promotion of Administrative Justice Act (PAJA).