



25 July 2008

LIQUOR PRODUCTS AMENDMENT BILL (B22 - 2008) - SUMMARY

1. Background

South Africa recently signed the South Africa/European Union wine and spirit agreement, and has undertakings with the World Wine Trade Group, which both affect the wine industry. The Liquor Amendment Bill also arose due to matters that are related to the protection of geographical indications in terms of the Agreement on Trade Related Intellectual property Rights (TRIPS), and to amend the composition of the Wine and Spirit Board to reflect the new demographics of the country.¹

While the main body of liquor regulations and all matters relating to beer production fall under the Department of Trade and Industry (DTI), other liquor related matters are exercised by the Departments of Agriculture and Health.² However, food safety issues and most matters that are related to the wine industry fall under the Department of Agriculture. The Liquor Amendment Bill will therefore, also bring temporary relief by solving the issue of international compliance on food safety and other international obligations.³ The Bill will also be able to assist emergent farmers by making changes in production to allow the introduction of cheaper vines that give better harvesting results at an earlier date in their cultivation, and will further regulate traceability of products required to address food safety concerns as required by the international agreement.⁴

For all these reasons, urgent amendments to the Liquor Products Act (Act No. 60 of 1989) were needed to protect South African markets.⁵ In May 2008, the Department of Agriculture introduced to Parliament, the Liquor Products Amendment Bill (B22 – 2008), whose main aim is to amend the Liquor Products Act (Act No. 60 of 1989).

2. The Liquor Products Act of 1989 (herein after referred to as the Act)

The purpose of the Act is to provide for:⁶

- control over the sale and production for sale of certain alcoholic products;
- the composition and properties of such products;
- the use of certain particulars in connection with the sale of such products;
- the establishment of schemes;
- control over the import and export of certain alcoholic products; and for
- matters connected therewith.

The Act saw the establishment of the Wine and Spirit Board (the Board), which acted as a juristic body whose members were appointed by the Minister of Agriculture. The members of the Board consisted of four persons each nominated by the *Ko-operatiewe Wijnbouwers Vereniging van Zuid Afrika (KWVZA)* and the Cape Wine and Spirit Institute (CWSI); two officials of the Department of Agriculture; two persons from the Agricultural Research

¹ Ibid.

² Mogajone, 2008.

³ Ibid.

⁴ Ibid.

⁵ du Toit, 2008.

⁶ Liquor Products Act, 1989.



Council (ARC); and a person determined by the Minister after consultation with the KWVZA and CWSI. Subject to the provisions of the relevant subparagraphs of the Act, the Minister also had the authority to appoint an alternate member for each of the Board members referred to previously. The alternate member may in the absence of the member for whom he/she was appointed, attend any Board meeting and act in the place of that member.

3. The Liquor Products Amendment Bill

The Liquor Products Amendment Bill (herein after referred to as the Bill) will amend the Act so as to insert definitions and to amend and delete others. The Bill therefore, seeks to:⁷

- (a) amend the composition of the Wine and Spirit Board (the Board) to ensure that the industry is fairly and well represented;
- (b) formalise the custom that the Board first consult with interested parties when advising the Minister on any aspect of the Act that falls outside the ambit of schemes;
- (c) make provision that products that intend to form alcohol after their sale to the consumer (e.g. by adding warm water to a prepared powder) also fall under the Act;
- (d) amend the requirements for wine to conform to international standards and trends – include the proposal that wine can be made from all grapes of the genus, *Vitis*, not only from *vinifera* species as is currently the case;
- (e) authorise that a prescribed requirement may also be required on an outer container and on a liquor product's primary container other than on the label;
- (f) create the framework for compliance with the country's international obligations in respect of geographical indications;
- (g) clarify that schemes may only be established in respect of liquor products derived from grapes – all are administered by the Board;
- (h) ensure that importation of liquor products is subject to the country's current and future international obligations and agreements (e.g. Agreement between the Republic of South Africa and the European Community on Trade in Wine);
- (i) make provision for regulations relating to the quantity and marking of receptacles used in the production and storage of liquor products for effective application of the Act and to prevent fraudulent practices; and
- (j) make provision for regulations to allow for a relaxation of a requirement of a regulation or a scheme so as to enable more flexible application of this legislation.

The Department had in-depth consultations with the Wine and Spirit Board, and a working group took place with a representative wine industry.⁸ A Draft Bill with an invitation for comments was published in the Government Gazette in 2005, and all comments were incorporated in the current Bill. The Department found no financial implications for the state that are associated with the implementation of the Bill.

The State Law Advisers and the Department of Agriculture advised that the Bill be dealt with in accordance with the procedure established by section 75 of the Constitution as it contains no provisions for section 74 or 76 procedures. The State Law Advisers are also of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance

⁷ Liquor Products Amendment Bill, 2008.

⁸ Liquor Products Amendment Bill, 2008.



Framework Act, 2003 (Act No. 41 of 2003) as the Bill contains no provisions pertaining to customary law or customs of traditional communities.

Questions

1. Can the Department clarify with an example, the meaning of objective (j) of the Bill, "...provision for relaxation of a requirement of a regulation or a scheme so as to enable more flexible application of this legislation." Who provides relaxation of a requirement of a regulation or a scheme and under what circumstances?
2. Whom does the Department consider as a representative wine industry? How involved was the public in the drafting of the Bill?
3. In the Liquor Act, the Minister had authority to appoint an alternate member for each of the Board members. Is this still the case with the new Bill, if not, how is this done?
4. Given that consultations with the Wine and Spirit Board and the wine industry were done in 2005, is it not possible that some of the suggestions may be irrelevant today?
5. Have there been any follow-up or further consultations about the Bill after 2005?
6. Why is the regulation of non-liquor alcoholic beverages (e.g. beer) falling under the DTI considering that these are also made from agricultural products (sorghum, barley, etc.)?

REFERENCES

Government Gazette, 2008. Liquor Products Amendment Bill (B22 – 2008) No. 31050. Cape Town, 12 May.

Statutes of the Republic of South Africa, 1989. Liquor Products Act, Act No. 60 of 1989. 17 May.

Websites

du Toit D, 2008. Liquor Act changes needed urgently to protect South Africa, says minister. Legislative Information: News from Parliament. Tabling of the Liquor Products Amendment Bill to the Portfolio Committee on Agriculture and Land Affairs.
www.sabinet.co.za/sabinetlaw/news_par655.html

Mogajone K, 2008. Liquor Act changes needed urgently to protect South Africa, says minister. Legislative Information: News from Parliament. Tabling of the Liquor Products Amendment Bill to the Portfolio Committee on Agriculture and Land Affairs.
www.sabinet.co.za/sabinetlaw/news_par655.html