



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 1843

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 91

1998

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 6 of 1998: Liquor Act, 1998.

Act No. 6, 1998

LIQUOR ACT, 1998**ACT**

To consolidate and amend the laws relating to the control of the sale and supply of liquor; and to provide for matters incidental thereto.

(Signed by the President on 3 April 1998)

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BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

PRELIMINARY**Definitions**

1. In this Act, unless the context otherwise indicates -

"accommodation establishment" means premises registered under the Tourism Ordinance as a hotel, a motel, a pension, a guest house, a lodge, a guest farm, a rest camp, a caravan park or a safari undertaking;

"advertise" means to advertise in the prescribed manner;

"appellant" means the person who lodges an appeal in terms of section 41;

"appeal" means an appeal lodged in terms of section 41;

"applicant" means a person who applies for a licence, approval or authority in terms of this Act;

"apply" means to apply for any licence, approval or authority in terms of this Act, and "application" has a corresponding meaning;

"beer" means the drink manufactured by a process which includes the fermentation of an appropriate malt mash, with or without cereals, and flavoured with hops, additives and preservatives;

"caravan park" means an accommodation establishment registered as a caravan park under the Tourism Ordinance;

"certificate of renewal" means a certificate issued in terms of section 38(5);

"closed day" means a Sunday or a public holiday referred to in, or declared under, the Public Holidays Act, 1990 (Act 26 of 1990);

"Committee" means a regional liquor licensing committee established by section 24(1);

"Committee Chairperson" means the chairperson of a Committee referred to in section 24(2)(a);

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“controlling interest” means any interest of whatever nature in a business or undertaking, enabling the holder of such interest to exercise, directly or indirectly, control of any kind of, or in any way over, the activities or assets of the business or undertaking;

“day” means a calendar day, including a closed day;

“dining room” means movable or immovable premises on which hot or cold meals on seated accommodation during any time of the day are provided to the public on at least five days a week;

“disqualified person” means a person disqualified to hold a licence or to be a manager as contemplated in section 19;

“district” means a district for which a court is established as contemplated in section 1 of the Magistrates’ Courts Act, 1944 (Act 32 of 1944);

“district health officer” means a health officer assigned to a local authority area, district or region in which licensed premises are situated;

“financial interest” means any interest arising from the ownership or leasing of a business conducted on a licensed premises, or from the ownership of such premises, or from any share in such ownership of the business, leasing of the business or ownership of the premises;

“guest”, in relation to an accommodation establishment, means any person to whom overnight accommodation, with or without meals, is provided for reward in such accommodation establishment and in respect of whom the prescribed particulars have been entered into the guest register of such accommodation establishment in terms of section 41 of the Tourism Ordinance;

“guest farm” means an accommodation establishment registered as a guest farm under the Tourism Ordinance;

“guest house” means an accommodation establishment providing overnight lodging with at least one daily meal;

“health officer” means a person registered or authorized to practise as such, or to practise as a health inspector, under the Allied Health Services Professions Act, 1993 (Act 20 of 1993), or to practise as a sanitary inspector as defined in the Public Health Act, 1919 (Act 36 of 1919);

“hotel”, except in the phrase “hotel liquor licence”, means an accommodation establishment registered as a hotel under the Tourism Ordinance;

“hotel liquor licence” means a licence granted under section 3 in respect of an accommodation establishment;

“inquiry” includes an appeal in terms of section 41;

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“inspector” means a person designated as such under subsection (1) of section 67, or referred to in subsection (2) of that section;

“issue”, when used in relation to a licence, includes the handing over, or the dispatching by prepaid registered post, of the duly signed licence to the licensee by the officer authorized under this Act to so issue the licence, after payment of the prescribed fee in respect of the issue of the licence;

“issuing authority” means the person or body who or which issues a licence, an authority or an approval in terms of this Act;

“legal practitioner” means a person duly admitted to practise as such under the Legal Practitioners Act, 1995 (Act 15 of 1995);

“licence”, except in section 61, means a licence granted and issued under this Act authorizing the sale of liquor or light liquor;

“licensed business” means the business conducted in terms of a licence;

“licensed premises” means the premises in respect of which a licence is granted and which premises are described and specified in the licence;

“licensee” means a person holding a licence issued under this Act and “holder” or “licence holder” has a corresponding meaning;

“light liquor” means any liquor which contains not more than sixteen per cent by volume of alcohol;

“liquor” means -

- (a) any spirituous liquor or any wine or beer containing three per cent or more by volume of alcohol, excluding methylated spirit;
- (b) tombo or any other fermented, distilled, spirituous or malted drink, traditional or non-traditional, which contains three per cent or more by volume of alcohol;
- (c) any drink or concoction which the Minister by notice in the *Gazette* declares to be liquor,

and “intoxicating liquor” has a corresponding meaning;

“local authority” means -

- (a) a local authority council as defined in section 1 of the Local Authorities Act, 1992 (Act 23 of 1992) and in whose area the licensed premises are situated; or

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- (b) if the licensed premises are not situated in an area referred to in paragraph (a), the regional council in whose region the licensed premises are situated;

“magistrate” means a person appointed under section 9 of the Magistrates’ Courts Act, 1944 (Act 32 of 1944) as a magistrate for the district in which the licensed premises or the premises in respect of which an application in terms of this Act is made, are situated, and includes an additional magistrate;

“manager” means a manager of a licensed business or undertaking, contemplated in section 18;

“meal” means an ordinary meal, or as may be prescribed;

“methylated spirit” means -

- (a) spirit denatured in terms of any law relating to the denaturation or methylation of spirit;
- (b) any other denatured, medicated, perfumed or otherwise treated spirit which the Minister by notice in the *Gazette* declares to be methylated spirit for the purpose of this Act;

“Minister” means the Minister of Trade and Industry;

“non-alcoholic drink” means a potable drink which is not liquor;

“off-sales” means the selling in terms of an off-sales licence of liquor in sealed containers -

- (a) to a licence holder for re-sale; or
- (b) to any other person for consumption away from the licensed premises on which such liquor is sold;

“off-sales licence” means -

- (a) a bottle store licence;
- (b) a grocery liquor licence;
- (c) a wholesale liquor licence;
- (d) a brewery depot licence;
- (e) a distillery licence;
- (f) a vineyard liquor licence; or
- (g) a parks off-sales liquor licence;

“on-consumption” means the consumption of liquor on the licensed premises on which such liquor is sold;

“on-consumption licence” means -

- (a) a hotel liquor licence;
- (b) a restaurant liquor licence;
- (c) a shebeen licence;
- (d) a club liquor licence;
- (e) a special liquor licence;
- (f) a temporary liquor licence;
- (g) a vineyard liquor licence; or
- (h) a parks on-consumption liquor licence;

“Permanent Secretary” means the Permanent Secretary : Trade and Industry;

“premises” include -

- (a) immovable property and its appurtenances; and
- (b) the dining room of a train or other vehicle,

in respect of which a licence has been granted;

“prescribe” means prescribe by regulation;

“private bar” means a bar at an accommodation establishment to which bar are admitted -

- (a) the guests lodging overnight at such accommodation establishment;
- (b) a person visiting a guest referred to in paragraph (a); or
- (c) persons taking a meal in the dining room or restaurant at such accommodation establishment;

“proprietor” means the person who owns a business conducted in or on a licensed premises and who is responsible for the management of such business, whether through a manager or otherwise, and includes the holder of the licence concerned;

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“public bar” means a bar on the premises of a business conducted in terms of an on-consumption licence and to which the public is admitted;

“public place” means any square, garden, park, recreation ground, show ground, rest camp or other open or enclosed space intended for the use, enjoyment or benefit of the public;

“region” means a region established by the Establishment of the boundaries of regions and Local Authorities in Namibia Proclamation, 1992 (Proclamation 6 of 1992);

“regional council” means a regional council established under section 2 of the Regional Councils Act, 1992 (Act 22 of 1992);

“regulation” means a regulation made or in force under this Act;

“refreshments” means non-alcoholic drinks or snack foods;

“restaurant” means premises on which hot or cold meals on seated accommodation are provided to the public during the course of the day or evening, on at least five days a week, or, in the case of a guest farm, a rest camp, a caravan park or a safari undertaking, are provided to guests when lodging overnight at such guest farm, rest camp, caravan park or safari undertaking;

“rest camp” means an accommodation establishment registered as a rest camp under the Tourism Ordinance;

“safari undertaking” means an accommodation establishment registered as a safari undertaking under the Tourism Ordinance;

“sealed container” means a closed container which cannot be opened without breaking or damaging such container, or any part, seal, adhesive label or other attachment of or to such container;

“seat of the region” means the seat of the regional council of a region as specified in column 3 of Schedule 1 to the Regional Councils Act, 1992;

“secretary” means the secretary of a Committee appointed in terms of section 25;

“sell” includes to exchange, or to offer, display, keep, deliver, supply or dispose of for the purpose of selling, or to authorize, direct or allow to be sold, and “sale” has a corresponding meaning;

“shebeen” means any premises exclusively or mainly used for the sale to, and the consumption on the premises by, the public of light liquor and refreshments, and includes a tavern, but does not include an accommodation establishment,

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restaurant or club, or any enterprise or undertaking referred to in section 7(1);

“snack foods” means fresh or perishable foods, or packaged or non-perishable foods as may be prescribed;

“spirituous liquor” means distilled substances of any description and also any liquor which contains more than sixteen per cent by volume of alcohol;

“this Act” includes any regulation;

“tombo” means the traditional or home-brewed alcoholic drink, also known as sorghum beer, made from a fermentation of mahango, sorghum or other cereal or vegetable matter, with or without additives;

“tourist” means a tourist as defined in the Tourism Ordinance;

“Tourism Ordinance” means the Accommodation Establishments and Tourism Ordinance, 1973 (Ordinance 20 of 1973); and

“yeast” means any substance produced by the propagation of a fungus as a froth or sediment during the alcoholic fermentation of malt worts or other saccharine fluids, and which is used in the brewing of beer, in the leavening of bread or for medical purposes.

**PART I
LICENCES****Sale of liquor and kinds of licences**

2. (1) Subject to sections 76 or 77, no person shall sell liquor, except pursuant to and in terms of a current licence authorizing the sale of such liquor.

(2) The following licences authorising the sale of liquor by the licensee may, subject to the further provisions of this Act, upon application by any person who complies with the requirements and qualifications prescribed by this Act, be granted and issued to such person:

- (a) On-consumption licences -
 - (i) hotel liquor licence;
 - (ii) restaurant liquor licence;
 - (iii) shebeen licence;
 - (iv) club liquor licence;
 - (v) special liquor licence;

- (vi) temporary liquor licence;
- (vii) parks on-consumption liquor licence;
- (b) off-sales licences -
 - (i) bottle store licence;
 - (ii) grocery liquor licence;
 - (iii) wholesale liquor licence;
 - (iv) brewery depot licence;
 - (v) distillery licence;
 - (vi) parks off-sales liquor licence;
- (c) on-consumption or off-sales licence, or on-consumption and off-sales licence -
 - vineyard liquor licence.

(3) No licence shall be granted to or be issued in the name of a disqualified person.

(4) A licence granted or issued in contravention of subsection (3) shall be null and void *ab initio*.

Hotel liquor licence

3. (1) A hotel liquor licence may, upon an application made in terms of subsection (2), be granted and issued to, and be held by, the proprietor of an accommodation establishment other than a guest house, if the accommodation establishment maintains a dining room or restaurant on the premises where the accommodation establishment is conducted.

- (2) An application for a hotel liquor licence shall -
 - (a) be made in the prescribed form and manner; and
 - (b) together with the application fee imposed by the First Schedule, be lodged with the Chairperson of the Committee established for the region in which the accommodation establishment contemplated in subsection (1) is situated.

(3) The Committee Chairperson referred to in paragraph (b) of subsection (2) shall, in consultation with the Permanent Secretary : Environment and Tourism, consider the application and may -

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- (a) grant or refuse the application; or
 - (b) grant the application subject to such conditions as the Committee Chairperson may, in consultation with that Permanent Secretary, impose under this Act or under the Tourism Ordinance.
- (4) Subject to subsection (5), a hotel liquor licence shall authorise the sale of liquor on the premises of the accommodation establishment concerned, including in any bar, restaurant or dining room on such premises, and for on-consumption on such premises only.
- (5) Notwithstanding subsection (4), only light liquor may be sold on the licensed premises of a caravan park.
- (6) No guest farm, rest camp, safari undertaking or caravan park shall, subject to subsection (7), have a public bar.
- (7) Notwithstanding subsection (6), the Committee Chairperson may, in consultation with the Permanent Secretary : Environment and Tourism, and with the approval of the Minister, upon an application made in the prescribed form and manner, authorise a public bar contemplated in subsection (6) in respect of a guest farm or rest camp, if, in the opinion of the Committee Chairperson, a need for such a bar exists.
- (8) A hotel may, in addition to its other licensed facilities, but subject to such conditions as the Committee Chairperson, in consultation with the Permanent Secretary : Environment and Tourism, may determine, have on its premises one or more public bars.
- (9) The Permanent Secretary : Environment and Tourism may, subject to such conditions as he or she may deem appropriate, in writing delegate to one or more officers in the Ministry of Environment and Tourism, any of the powers, duties or functions he or she has in terms of this section, but shall not be divested of any of the powers, duties or functions so delegated.

Restaurant liquor licence

4. (1) A restaurant liquor licence may, upon an application made in terms of section 27, but subject to subsection (2), be granted to and held by the proprietor of a dining room or restaurant.
- (2) No restaurant liquor licence shall, subject to subsection (6), be granted in respect of a dining room or a restaurant at, or on the premises of, a petrol or diesel filling station.
- (3) A restaurant liquor licence may be granted with a public bar or without a public bar.

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(4) A restaurant liquor licence shall authorise the sale on the licensed premises of light liquor for on-consumption by persons taking a meal at such restaurant.

(5) A restaurant liquor licensee may serve or sell light liquor as contemplated in subsection (4) on any part of the licensed premises, including in a public bar on the premises, subject thereto that such light liquor may be served or sold only during such periods of time when meals are served, or are available to be served, to the public on a part of the licensed premises.

(6) The restrictions relating to the granting of a restaurant liquor licence on the premises of a petrol or diesel filling station in terms of subsection (2) shall, notwithstanding any provision to the contrary in this Act or in any other law contained, not apply to a restaurant liquor licence granted or issued under section 6(1)(b) of the repealed Liquor Ordinance, 1969 (Ordinance 2 of 1969), before, and valid immediately prior to, the date of commencement of this Act.

Shebeen liquor licence

5. (1) A shebeen liquor licence may, upon an application made in terms of section 27, be granted to and held by the proprietor of a shebeen which complies with the requirements relating to shebeens as set out in the Fourth Schedule.

(2) A shebeen liquor licence shall authorise the sale on the licensed premises of liquor for on-consumption.

(3) A shebeen liquor licence may not be granted in respect of, or for a shebeen to be conducted on, the premises of a petrol or diesel filling station.

(4) The Minister may -

- (a) by notice in the *Gazette* amend the Fourth Schedule; or
- (b) prescribe conditions applicable to shebeens, including the hours during which light liquor and other articles or items may be sold on the licensed premises, and the kinds of liquor which may be so sold.

(5) No shebeen liquor licence shall be granted to any person who is the holder of a bottle store licence granted under section 9, or deemed to be so granted.

Club liquor licence

6. (1) A club liquor licence may, upon an application made in terms of section 27, be granted to and held by a club in respect of which the Committee is satisfied -

- (a) that the club is a *bona fide* club;
- (b) that according to the rules of the club -
 - (i) the club consists of not less than 35 ordinary members;
 - (ii) its management is elected by its members and regularly holds meetings of which proper minutes are kept;
 - (iii) its members, and no other persons, are allowed to pay for or use the facilities of the club, including liquor or refreshments supplied on the premises of the club;
 - (iv) in so far as the use of its facilities by guests of its members is allowed by the rules, the number of guests, excluding family members, of any member may not on any occasion exceed the number so allowed; and
 - (v) proper records, including a register of members of the club, are kept by the management.

(2) A club liquor licence shall authorize the sale of liquor on the club premises to members of the club for on-consumption by such members or their authorized guests.

Special liquor licence

7. (1) A special liquor licence may, upon an application made in terms of section 27, be granted to and held by a person to sell liquor or light liquor, as the case may be, on the licensed premises for on-consumption, in circumstances materially different from the circumstances in which liquor may be sold in terms of any other licence which may be granted under this Act, in particular in respect of, but not limited to -

- (a) theatres and other cultural centres, excluding cinemas;
- (b) sports grounds;
- (c) night clubs and dance halls;
- (d) tourist safari camps, whether or not registered under the Tourism Ordinance;
- (e) railway stations and trains;
- (f) international motor coaches;
- (g) ships;

- (h) airports or aerodromes; or
- (i) any other enterprise or undertaking approved by the Committee.

(2) No special liquor licence shall be granted authorizing a public bar in or on an establishment other than an establishment specified or contemplated in subsection (1).

(3) A special liquor licence shall state the terms, conditions, privileges and restrictions applicable to the sale and consumption of liquor or light liquor, as the case may be, on the licensed premises.

(4) Notwithstanding anything in this section contained, a special liquor licence shall not be granted without the written approval of -

- (a) the Minister of Environment and Tourism, in respect of a tourist safari camp; or
- (b) the Minister of Works, Transport and Communication, in respect of a railway station, railway train, international motor coach, ship or airport.

Temporary liquor licence

8. (1) A temporary liquor licence for on-consumption may, upon an application made in terms of section 32, be granted in respect of one or more bars, or one or more restaurants or dining rooms, to serve liquor or light liquor, as the case may be, at or on the grounds of any *bona fide* exhibition, show, race meeting, sports event, fair or other public function, or place of recreation or amusement.

(2) Where an event referred to in subsection (1) takes place at more than one venue, a separate licence shall be required for, and may be granted for or in respect of, each such venue.

(3) The bar, restaurant or dining room in respect of which a licence under subsection (1) is granted, shall be specified in the licence issued.

- (4) A temporary liquor licence shall be issued -
 - (a) to the secretary or manager of the exhibition, show, race meeting, sports event, fair or other event in respect of which such licence is applied for;
 - (b) with the approval of the manager of an event contemplated in paragraph (a), to the secretary or manager of any individual *bona fide* organisation present or taking part at such event;

- (c) to the secretary or manager of a *bona fide* organisation collecting funds for lawful purposes at an event contemplated in paragraph (a) or at any other public function;
 - (d) to the holder of a hotel liquor licence or restaurant liquor licence who has been contracted or authorized by any secretary or manager referred to in paragraph (b) to provide food and liquor for consumption at any event contemplated in paragraph (a); or
 - (e) to the holder of a club liquor licence for the purposes of any *bona fide* public function, sports activities or social event held on the premises of such club, whether such function, event or activities are held or organized by such club or by any other party.
- (5) A temporary liquor licence granted under subsection (1) shall authorize the sale and consumption of liquor or light liquor, as the case may be -
- (a) on the premises;
 - (b) at the event;
 - (c) on the day or days; and
 - (d) during the hours,

specified in the licence, and shall restrict such sale and consumption to such premises, event, day or days and hours.

(6) No temporary liquor licence shall be granted for a period exceeding six consecutive days.

Bottle store licence

9. (1) A bottle store licence shall authorize the sale on the licensed premises of liquor in sealed containers for consumption away from such premises.

(2) A bottle store licence may, upon an application made in terms of section 27, and subject to the further provisions of this Act, be granted and issued to, and held by, the applicant.

(3) The holder of a hotel liquor licence, other than a hotel liquor licence granted in respect of a guest farm, a rest camp, a caravan park or a safari undertaking, shall, subject to the further provisions of this Act and upon an application made in terms of section 27, be entitled to a bottle store licence to be conducted upon premises which are situated -

- (a) on or within the hotel premises, but in such a location and manner that access to the bottle store shall only be obtained from a street; or

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(b) in the local authority area wherein such hotel is situated, but not more than four kilometres from such hotel.

(4) If the holder of a hotel liquor licence referred to in subsection (3), in addition to such licence, holds a bottle liquor licence, and such holder ceases to hold such hotel liquor licence, the bottle store licence held by such holder shall, subject to subsection (5), terminate upon the date such holder so ceases to hold such hotel liquor licence.

(5) If the holder referred to in subsection (4) ceases to hold the hotel liquor licence as a result of the transfer of such licence to another person, the bottle store licence referred to in that subsection shall, unless transferred to such other person within a period of three months after the transfer of the hotel liquor licence, terminate at the expiration of such three month period.

(6) A bottle store licence shall not be granted in respect of any establishment referred to in subsection (4) of section 7, except with the prior written approval of the Minister respectively mentioned in paragraph (a) or (b) of that subsection, as the case may be.

(7) No bottle store licence shall be granted to any person who is the holder of a shebeen liquor licence granted under section 5.

Grocery liquor licence

10. (1) A grocery liquor licence may, upon an application made in terms of section 27, be granted and issued to, and held by, a person who satisfies the Committee that he or she is conducting a business as a general dealer in food-stuffs, groceries or other commodities or merchandise for house-hold consumption, or will be conducting such a business, whether or not other goods, in addition to such food-stuffs, groceries, commodities or merchandise for house-hold consumption, are or will be sold on or at the premises concerned.

(2) A grocery liquor licence shall authorize the sale of light liquor in sealed containers on a specified portion of the premises where the business referred to in subsection (1) is conducted, for consumption away from such premises.

(3) No bottle store licence shall be granted to a person referred to in subsection (1) for the conducting of a business or undertaking in terms of such licence on the premises referred to in that subsection.

(4) The Minister may prescribe the hours during which any light liquor may be sold on a licensed premises contemplated in subsection (1).

Wholesale liquor licence

11. (1) A wholesale liquor licence may be granted upon an application made in terms of section 27 and shall, subject to subsection (3), authorize the

sale, in sealed containers, by the holder of such licence to any other licensee for resale by such other licensee, of such kinds of liquor as such other licensee is entitled to sell in terms of his or her licence.

(2) A wholesale liquor licensee may both on or away from the licensed premises solicit or take orders for the delivery of liquor from the premises.

(3) Notwithstanding subsection (1), a wholesale liquor licensee may sell liquor in sealed containers to -

- (a) an airline designated in terms of a bilateral air services agreement entered into between the Government of Namibia and the country in which such airline is validly registered; or
- (b) any person in charge of any premises or vessel in respect of which the exemptions granted by section 77 (a), (b), (c) or (e) apply.

Brewery depot licence

12. (1) A brewery depot licence may upon an application made in terms of section 27, be granted and issued to, and held by, a brewer of beer who holds a licence issued under section 1 of the Brewers and Distillers Licences Duty Proclamation, 1924 (Proclamation 3 of 1924).

(2) Subject to subsection (3) or (4), as the case may be, a brewery depot licence shall authorize the sale, in sealed containers, of beer brewed in terms of a licence referred to in section 1 of the Brewers and Distillers Licences Duty Proclamation, 1924, at any depot approved by the Committee concerned, to any licensee.

(3) A separate licence referred to in subsection (1) shall be required for each depot referred to in subsection (2).

Distillery licence

13. (1) A distillery licence may, upon an application made in terms of section 27, be granted and issued to, and held by, any person who holds a distiller's licence in Namibia under the Customs and Excise Act, 1964 (Act 91 of 1964).

(2) Subject to subsection (3), a distillery licence shall authorize the sale on the distillery premises, in sealed containers, of products distilled at such premises, to any licensee under this Act, further subject to -

- (a) the conditions of the distiller's licence of the holder held under the Customs and Excise Act, 1964, referred to in subsection (1); and
- (b) such further conditions, if any, as may be prescribed.

Vineyard liquor licence

14. (1) A vineyard liquor licence may, upon an application made in terms of section 27, be granted and issued to, and held by, a producer of wine who produces wine at the vineyard concerned.

(2) A vineyard liquor licence shall authorize the sale at or on the premises of the vineyard concerned of wine produced at such vineyard -

- (a) for consumption on; or
- (b) in sealed containers for consumption away from,

the premises of such vineyard, in the prescribed manner.

Parks liquor licence

15. (1) A parks liquor licence in respect of premises situated in a national park, a national game reserve, a nature reserve, a recreation area or other public resort belonging to the State may, upon an application made in terms of subsection (2), be granted and issued to, and held by, a person who is not a disqualified person.

(2) An application for a parks liquor licence shall be made by the applicant in the prescribed form and manner and, together with the application fee imposed by the third column of Part 1 of First Schedule, be lodged with the Chairperson of the Committee established for the region in which the national park, national game reserve, nature reserve, recreation area or other public resort referred to in subsection (1) is situated.

(3) The Committee Chairperson referred to in subsection (2) shall, in consultation with the Permanent Secretary : Environment and Tourism, consider the application, and may -

- (a) grant or refuse the application; or
- (b) grant the application subject to such conditions as the Committee Chairperson may, in consultation with that Permanent Secretary, impose under this Act or under the Tourism Ordinance.

(4) Separate parks liquor licences shall be required for -

- (a) on-consumption; and
- (b) off-sales.

(5) A parks liquor licensee holding an on-consumption licence may serve or sell light liquor for on-consumption only to persons taking a meal on

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the licensed premises at or in the facilities provided for such purpose by the licensee.

(6) A parks liquor off-sales licence shall authorize the sale on the licensed premises, in sealed containers and for consumption away from the licensed premises only -

- (a) of light liquor to day-visitors to the park, reserve, recreation area or resort contemplated in subsection (1); or
- (b) subject to such conditions as the Committee Chairperson referred to in subsection (2) may, in consultation with the Permanent Secretary: Environment and Tourism, impose, of spirituous liquor to visitors staying overnight in the park, reserve, recreation area or resort contemplated in that subsection.

(7) Subject to subsection (8), the provisions of this section shall not prohibit the Permanent Secretary : Environment and Tourism to, on behalf of the State and without any licence, sell liquor in any park, reserve, recreation area or resort, as the case may be, contemplated in subsection (1), in terms of subsection (6) as if that Permanent Secretary or the State were the holder of a parks liquor licence in respect of such park, reserve, recreation area or resort, as the case may be.

(8) Subsection (7) shall not apply in a park, reserve, recreation area or resort, as the case may be, contemplated in subsection (1) while any person holds a park liquor licence in respect of such park, reserve, recreation area or resort, as the case may be.

(9) The Permanent Secretary : Environment and Tourism may, subject to such conditions as he or she may deem appropriate, delegate to one or more officers in the Ministry of Environment and Tourism, any of the powers, duties or functions he or she has in terms of this section, but shall not be divested of any of the powers, duties or functions so delegated.

PART II
LICENCE CONSIDERATIONS AND
IMPOSING OF CONDITIONS

Consideration of licence applications

16. A Committee, a Committee Chairperson or a magistrate, as the case may be, shall, when considering an application for the granting of a licence under this Act -

- (a) take into account -

- (i) the social and welfare consequences which the business or undertaking to be conducted in terms of the licence will have for the residents of the district or local authority area concerned, as the case may be;
 - (ii) whether the business or undertaking to be conducted in terms of the licence concerned is likely to create a public nuisance or annoyance in the vicinity of such business;
 - (iii) the need to avoid, as far as possible, the establishment of licensed premises in the vicinity of schools or places of worship;
 - (iv) the suitability of the premises upon which the intended licensed business or undertaking is to be conducted relating to the safety, health and town planning requirements in respect of accommodation and sanitary facilities;
 - (v) the possibility of a monopolistic condition in the liquor trade detrimental to the public interest being created or aggravated by the grant of such licence; and
 - (vi) whether the name of the business or undertaking to be conducted in terms of the licence will not be offensive to the community it will serve, or is not similar to, or may be confused with, the name of any business conducted in terms of any existing licence;
- (b) not take into account any commercial factors or any economic consequences for existing licensees, except where such factors or consequences are considered for the purposes of subparagraph (v) of paragraph (a).

Imposing of conditions

17. A Committee, a Committee Chairperson or a magistrate, as the case may be, may, when granting any application for a licence, for an approval or for an authority under this Act, impose conditions which -

- (a) prohibit or restrict the sale or the consumption, as the case may be, of liquor in respect of -
 - (i) certain parts of the premises concerned;
 - (ii) certain times of day; or
 - (iii) certain kinds of liquor;

- (b) require the applicant to effect alterations or improvements to the premises relating to the standard of accommodation, facilities or amenities, the sanitary or safety arrangements or as to any other aspect of public conveniences on, or health or police supervision of, the premises concerned;
- (c) are, in the opinion of such Committee, a Committee Chairperson or a magistrate, as the case may be, considered necessary or desirable; or
- (d) may be prescribed in respect of the licence concerned.

Managers

18. (1) A licensee may appoint a manager for the business or undertaking conducted on the licensed premises concerned, which manager shall be a natural person and shall, subject to the direction and control of such licensee, be personally responsible for the day-to-day conducting of such business or undertaking.

(2) The licensee referred to in subsection (1) shall in writing inform the magistrate of the district in which the licensed premises are situated, of the full names, date of birth, identification number and residential address of the manager appointed under that subsection.

(3) A disqualified person shall not be appointed as a manager under subsection (1).

(4) Any person who appoints a manager in contravention of subsection (3) shall be guilty of an offence.

Disqualified persons

19. No person shall be granted an application for, or hold any licence, authority or certificate under this Act, or act as a manager referred to in section 18, if such person -

- (a) has either in Namibia or elsewhere during the preceding five years under any law been convicted of an offence relating to -
 - (i) the selling or supplying of liquor to any person not entitled to purchase or receive such liquor; or
 - (ii) the selling, dealing in or disposing of liquor without the licence required for such sale, dealing in or disposal;
- (b) is not a Namibian citizen or not lawfully admitted for permanent residence to, and resident in, Namibia;

- (c) is an unrehabilitated insolvent; or
- (d) is under the age of twenty-one years.

Contents of licence

20. A licence issued under this Act shall be in the prescribed form and shall contain full particulars in respect of -

- (a) the kind of licence, and in the case of a hotel liquor licence, the nature of the accommodation establishment;
- (b) the surname, first names, residential address and postal address of the licensee;
- (c) the surname, first names, residential address and postal address of the manager, if any, of the business conducted in terms of the licence at the time of the issue of the licence;
- (d) the trade name of the business conducted in terms of the licence;
- (e) the location of the premises where the business or undertaking concerned is or will be conducted;
- (f) the kind or kinds of liquor permitted to be sold on the premises;
- (g) the date of commencement and the date of expiry of the period of validity of the licence;
- (h) any conditions, restrictions or privileges, as the case may be, which -
 - (i) are to be complied with before the commencement date of the licence or within a specified period of time after such date; or
 - (ii) shall during the currency of the licence apply, including any specification relating to public or private bars;
- (i) the date and place of issue of the licence;
- (j) the fee paid in respect of the licence;
- (k) the title and signature of the issuing officer; and
- (l) such other particulars as may be prescribed.

Duration and termination of licences

- 21.** (1) A licence shall, subject to section 20(g), be valid from the

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date of issue of such licence.

- (2) A temporary licence shall terminate -
 - (a) at the expiry of the period of time for which such licence was granted; or
 - (b) if the licensee in writing surrenders such licence to the magistrate before the expiry of such period, on such date such licence is so surrendered.
- (3) A licence, including any renewal of such licence, but excluding a temporary licence, shall terminate -
 - (a) if the licensee in writing surrenders such licence to the secretary, or in the case of a hotel liquor licence or parks liquor licence, to the Permanent Secretary : Environment and Tourism;
 - (b) on 31 March of any year, if the annual licence fee in respect of such licence payable in terms of section 22(2) on or before such date of such year, remains unpaid on such date;
 - (c) on the date determined by the Committee in terms of section 64(5) or 65(6), as the case may be, in the event of the licence being cancelled under any of those sections;
 - (d) on the date of cancellation of such licence under section 72(2)(a);
 - (e) if the licensee ceases, or, for a continuous period of three months fails, to conduct business in terms of such licence;
 - (f) in the case of a hotel liquor licence, if the licensed premises ceases to be registered under the Tourism Ordinance; or
 - (g) in terms of any other provision of this Act providing for such termination.

Fees

- 22. (1) There shall be payable in the prescribed manner -
 - (a) on the lodging of an application, the fee imposed by the third column of Part I or II, as the case may be, of the First Schedule in respect of such application;
 - (b) on the issue of any licence, authority or approval, the fee imposed by the fourth column of Part I or II, as the case may be, of the First Schedule in respect of such licence, authority or approval, as the case may be; or

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- (c) on the lodging of an appeal in terms of section 41, the fee imposed by Part III of the First Schedule.
- (2) Every licensee, other than the holder of a temporary licence, shall during March of every year pay the annual licence fee imposed by the fourth column of Part I or II, as the case may be, of the First Schedule in respect of such licence.
- (3) The licence of a licensee who fails to comply with subsection (2), shall terminate in terms of paragraph (b) of subsection (3) of section 21.
- (4) No application in respect of which an application fee is imposed by the First Schedule, shall be lodged unless such fee has been duly paid in the prescribed manner and proof of such payment lodged with the person having to consider such application.
- (5) No fee paid in terms of any provision of this Act, or any part of such fee, shall be refundable.
- (6) All fees paid in terms of this Act shall be for the benefit of the State Revenue Fund.
- (7) The Minister may, by notice in the *Gazette*, amend the First Schedule and increase or decrease any amount specified in that Schedule.

**PART III
REGIONAL LIQUOR LICENSING**

Application

23. Sections 24, 25, 26, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38, 39 and 40 shall not apply to hotel liquor licences or parks liquor licences.

Regional Liquor Licensing Committees

- 24.** (1) For each region there is hereby established a Regional Liquor Licensing Committee.
- (2) A Committee established by subsection (1) shall consist of the following five members appointed in the following manner:
- (a) Two *ex officio* members, namely -
- (i) the magistrate resident in or assigned to the district in which the seat of the region concerned is situated, who shall be the Committee Chairperson; and

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- (ii) the police officer for the time being in command of the police for the region concerned, or in his or her absence, his or her deputy;
- (b) two members appointed by the Minister by notice in the *Gazette*, from the following persons -
 - (i) (aa) a health officer; or
 - (bb) a social worker registered or authorized to practise as such under the Social and Social Auxiliary Workers' Professions Act, 1993 (Act 22 of 1993); or
 - (cc) a registered nurse registered or authorized to practise as such under the Nursing Professions Act, 1993 (Act 30 of 1993); or
 - (dd) a medical practitioner registered or authorized to practise as such under the Medical and Dental Professions Act, 1993 (Act 21 of 1993),
practising his or her profession in the employment of the State in the region concerned and nominated by the Minister of Health and Social Services; and
 - (ii) one member nominated by the affiliated chamber in the region concerned of the Namibia National Chamber of Commerce and Industry and appointed by the Minister, or failing such a nomination, one resident of such region appointed by the Minister; and
- (c) one representative, residing in the boundaries of the region, appointed by the regional council concerned.
- (3) The Minister may appoint alternate members for those members appointed by him or her under subsection (2).
- (4) No -
 - (a) holder of a licence;
 - (b) manager appointed under section 18; or
 - (c) employee, partner, agent or spouse of any person referred to in paragraph (a) or (b),

shall be a member of a Committee.

(5) In the absence of a Committee Chairperson, the acting magistrate in the district concerned shall, during such absence, perform the functions of the Committee Chairperson.

Secretaries of Committees

25. (1) Every Committee Chairperson shall appoint a member of his or her staff to act as secretary of the Committee of which he or she is the chairperson.

(2) The secretary shall -

- (a) keep proper minutes of the proceedings and decisions of the Committee; and
- (b) perform the other functions conferred upon him or her by or under this Act, or assigned to him or her by the Committee Chairperson,

but shall not have the right to vote at any meeting of the Committee.

Proceedings of Committees

26. (1) Meetings of a Committee shall be held -

- (a) at the seat of the region; and
- (b) on and at the prescribed dates and times,

for the purpose of considering applications made in terms of section 27.

(2) The secretary shall cause -

- (a) a notice of the date, time and place of a meeting referred to in subsection (1), and the particulars of the applications or other matters to be considered at such meeting, to be published, in the prescribed form and manner, and in or within the prescribed period or periods of time, in two news papers circulating in the region; and
- (b) a copy of the notice referred to in paragraph (a) to be displayed on the notice board at the seat of the region, for not less than the prescribed period of time, immediately prior to the date of the meeting referred to in that paragraph.

(3) A quorum for a meeting of a Committee shall be three members, of whom one shall be the chairperson.

(4) Subject to subsection (5) -

- (a) every member of the Committee shall have one vote in respect of every matter put to the vote at a meeting; and
- (b) a decision of the Committee shall be taken by a majority of the votes cast by the members present at the meeting concerned.

(5) Notwithstanding subsection (4), the Committee Chairperson may, at a meeting of the Committee, in addition to his or her deliberative vote, exercise a casting vote in the event of an equality of votes.

(6) No member of a Committee shall remain present at any meeting of such Committee when any application or other matter in which he or she, or his or her partner, agent or business associate, or a member of his or her family or household has any interest, is being considered or decided on.

(7) Different forms or manners of, or different periods of time for, the publication or display of notices in terms of subsection (2) may be prescribed for the different regions.

Applications to a Committee

27. (1) An application for -
- (a) the grant of a licence under this Act, but excluding -
 - (i) a temporary liquor licence;
 - (ii) a hotel liquor licence; or
 - (iii) a parks liquor licence;
 - (b) a conditional authority in terms of section 30 in respect of proposed or incomplete premises;
 - (c) approval in terms of section 31 to temporarily or permanently remove a licence to different premises in the district concerned; or
 - (d) the amendment of any conditions, restrictions or privileges relating to an existing licence,

for consideration by the Committee concerned, shall, after payment of the applicable application fee imposed by the First Schedule, be lodged in the prescribed form and manner with the clerk of the court at the magistrate's court of the district in which the licensed premises, or the premises in respect of which a licence or a conditional authority is applied for, are situated.

(2) The magistrate of the district referred to in subsection (1) shall, in the prescribed manner, deal with an application lodged with such magistrate in terms of that subsection.

Objections and submissions

- 28.** (1) Subject to the further provisions of this section -
- (a) any resident, or group of residents, of the district in which the licensed business is or will be situated or conducted;
 - (b) any person conducting a business of any kind in the district referred to in paragraph (a); or
 - (c) the local authority in whose area of jurisdiction the licensed business is or will be situated or conducted,

may lodge an objection to the granting of an application made in terms of section 27.

(2) No licensee may lodge an objection in his or her capacity as a licensee, unless the objection bears on the existence or creation of a possible monopolistic condition referred to in section 16(a)(v).

(3) A person or group of persons referred to in subsection (1) may, irrespective of whether an objection in terms of that subsection has been lodged, for consideration at the hearing in terms of section 29, lodge a written submission setting out recommendations or general proposals in respect of -

- (a) the number or kind of licences in the district referred to in paragraph (a) of subsection (1); or
 - (b) the conditions, restrictions or privileges relating or applicable to the licences contemplated in paragraph (a) of this subsection.
- (4) Any objection or submission made in terms of this section shall -
- (a) be made and lodged in the prescribed form and manner; and
 - (b) be lodged with the secretary of the Committee not less than the prescribed period of time prior to the date of hearing of the application concerned.

(5) The secretary shall not less than the prescribed period of time prior to the date of hearing of the application concerned, furnish to the applicant a copy of the objection or submission, as the case may be, lodged or made in terms of this section.

Hearings by a Committee

29. (1) At a hearing by a Committee of an application made in terms of section 27, there may be present and be heard -

- (a) the applicant;
 - (b) any person who has lodged an objection or submission in terms of section 28; or
 - (c) a representative of the local authority in whose area of jurisdiction the licensed business is or will be situated or conducted.
- (2) Any person referred to in subsection (1) may appear in person and, when so appearing, may be represented by a legal practitioner.
- (3) The Committee Chairperson shall conduct the proceedings at a hearing referred to in subsection (1) *mutatis mutandis* in terms of the laws applicable to the hearing of a civil application in a Magistrate's Court and any *viva voce* evidence presented shall be under oath and be recorded *verbatim*.
- (4) Subject to subsection (3), a hearing referred to in subsection (1) shall be open to the public.
- (5) The Committee Chairperson may, at the commencement of or during the course of a hearing referred to in subsection (1), and for sufficient cause, adjourn such hearing to such date and time as the Chairperson may determine.
- (6) Any person, excluding a magistrate, who has submitted a report in respect of an application to be considered by a Committee, may, in relation to such report, during a hearing be called for examination by any person referred to in subsection (1) or by the Committee Chairperson.
- (7) The Committee shall, after considering the application, and the reports, submissions or objections pertaining to such application, submitted to it in terms of this Act, and after hearing those persons present at the meeting -
- (a) refuse the application; or
 - (b) grant the application; or
 - (c) grant the application subject to such conditions as the Committee may consider appropriate.
- (8) If a Committee refuses an application or grants an application subject to conditions not specified in the application, as the case may be, the Committee shall in writing furnish the applicant with reasons for such refusal or for the imposition of such conditions, as the case may be.

Conditional authority for proposed or incomplete premises

- 30.** (1) Whenever a Committee grants an application for a new licence in respect of premises not yet erected or completed, or which require alterations,

enlargement, renovation or repairs to make such premises suitable for conducting the business or undertaking in terms of such licence, the Committee shall issue to the applicant a conditional authority in the prescribed form for the issue of such licence, and shall in such conditional authority specify the conditions subject to which such application was granted, including the period of time within which such premises are to be so erected, completed, altered, enlarged, renovated or repaired, as the case may be, which period of time shall not exceed 12 months.

(2) The licence referred to in subsection (1) shall not be issued in terms of section 38 until the magistrate of the district in which the premises concerned are situated, in the prescribed form and manner confirms that such premises -

- (a) have been completed; and
- (b) comply with the conditions of the conditional authority granted under that subsection.

(3) If any condition imposed under subsection (1) is not complied with within the period of time specified in the conditional authority granted under that subsection, such conditional authority so granted shall, subject to subsection (4), terminate at the expiry of such period of time.

(4) The magistrate of the district in which the premises concerned are situated may, upon an application made in the prescribed form and manner and submitted to him or her together with the applicable application fee imposed by the third column of Part II of the First Schedule, before the expiry of the period of time contemplated in subsection (3) and subject to such further requirements as the magistrate may consider appropriate, extend such period of time for a further period of time not exceeding six months.

Removal of licenses

31. (1) A licensee, other than a temporary liquor licensee, may in terms of section 27(1)(c) in the prescribed form and manner, apply to the Committee for approval to, whether permanently or temporarily, remove a licence to another premises in the same local authority area, or if such premises are not situated in a local authority area, to other premises in the same district, as the case may be.

(2) The Committee shall consider an application referred to in subsection (1) *mutatis mutandis* in accordance with sections 16, 26, 27, 28 and 29.

(3) If the Committee approves an application referred to in subsection (1), an amended licence shall be issued to the licence holder concerned in terms of section 38.

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(4) If the Committee approves an application referred to in subsection (1) subject to conditions relating to the premises to which the licence is to be removed, or subject to any other condition under this Act, to be complied with -

- (a) within a specified period of time; or
- (b) before the licence may be removed to such premises,

then the Committee shall issue a conditional authority in respect of which subsections (2), (3) and (4) of section 30 shall *mutatis mutandis* apply.

- (5) No application for the removal of a licence -
- (a) from premises situated in the area of one local authority to premises situated in the area of another local authority; or
 - (b) from premises situated in one district to premises situated in another district,

shall be granted under this section.

Applications to a magistrate

- 32.** (1) An application for the granting of -
- (a) a temporary liquor licence under section 8;
 - (b) transfer of a licence under section 33;
 - (c) approval for the acquiring of a controlling interest under section 34;
 - (d) approval under section 35 for the change of the name of licensed premises;
 - (e) approval under section 36 for a short term leasing of licensed premises; or
 - (f) approval under section 50 for the making of structural alterations to any building on licensed premises,

shall in the prescribed form and manner and upon payment of the applicable application fee imposed by the third column of the First Schedule, be made to the magistrate of the district in which the licensed premises are situated.

(2) An applicant in respect of an application referred to in paragraph (b), (c) or (d) of subsection (1), shall -

- (a) within such period of time prior to lodging the application;

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- (b) in such form and manner; and
- (c) in such newspaper or newspapers,

as prescribed, publish a notice of such intended application.

(3) Upon receipt of an application contemplated in subsection (1) and before considering such application, the magistrate referred to in that subsection -

- (a) may, in the prescribed manner, obtain from any person or authority a report on or in respect of the applicant or the application, or on or in respect of any matter relating to the application; and
- (b) shall -
 - (i) cause a copy of the notice referred to in subsection (2) and a notice in the prescribed form containing the date of the public hearing contemplated in subparagraph (ii), to be displayed on the notice board at the magistrate's court in the form and manner, and for the period of time prior to the date of the hearing referred to in that subparagraph, as prescribed; and
 - (ii) conduct a public hearing in respect of the application, and may summon the applicant or any witness to appear before him or her at such hearing.

(4) Objections against, or submissions relating to, an application in terms of this section, shall be lodged with the clerk of the magistrate's court, *mutatis mutandis* in accordance with section 28.

(5) The provisions of section 29 shall *mutatis mutandis* apply to the hearing of an application by a magistrate in terms of this section

(6) The magistrate shall, after considering the application, reports, submissions or objections submitted to it in terms of this Act, and after hearing those present at the meeting -

- (a) refuse the application; or
- (b) grant the application; or
- (c) grant the application subject to such conditions as the magistrate may consider appropriate.

(7) If a magistrate refuses an application contemplated in subsection (1), or grants the application subject to conditions not specified in the application, as the case may be, he or she shall in writing furnish the applicant with reasons for such refusal or for the imposition of such conditions, as the case may be.

Transfer of licences

33. (1) A holder of a licence, except the holder of a temporary liquor licence, and any other person may in terms of section 32(1)(b) apply to the magistrate for the transfer of such licence into the name of such other person.

(2) The magistrate referred to in subsection (1) shall, subject to subsection (3), if satisfied -

- (a) as to the absence of any detrimental monopolistic condition referred to in subparagraph (v) of section 16(a);
- (b) that the person who applies for the licence to be transferred into his or her name is not a disqualified person; and
- (c) that the application complies with the further provisions of this Act,

approve the application referred to in subsection (1).

(3) The magistrate shall consider an application for the transfer of a hotel liquor licence or of a parks liquor licence in consultation with the Permanent Secretary: Environment and Tourism.

Acquiring of controlling interest

34. (1) A holder of a licence and any other person may, subject to subsection (3) of this section, in terms of paragraph (c) of section 32(1), apply to the magistrate for the granting of an approval for the acquisition by such other person of a controlling interest in the business or undertaking conducted in terms of the licence concerned.

(2) Subsection (2) of section 33 shall *mutatis mutandis* apply to an application contemplated in subsection (1).

(3) This section shall not apply to a club liquor licence or a temporary liquor licence.

Change of trade name of licensed premises

35. (1) No licensee shall change the trade name of the business or undertaking conducted on a licensed premises as specified in the licence issued in respect of such business or undertaking, except with the approval of the magistrate granted upon an application made by the licensee in the prescribed form and manner in terms of sections 32(1)(d) and 32(2).

(2) The magistrate shall, if satisfied that the proposed trade name complies with subparagraph (vii) of section 16(a), grant the application for the change of the trade name contemplated in subsection (1).

Leasing of licensed premises

36. (1) A licensed business may not be leased, except -
- (a) with the approval of the magistrate granted upon an application made by the licensee and the intended lessee in the prescribed form and manner in terms of the paragraph (e) of section 32(1); and
 - (b) for a period not exceeding six months.
- (2) A lease contemplated in subsection (1) shall -
- (a) be in writing; and
 - (b) be submitted for approval together with the application contemplated in that subsection.
- (3) Subsection (2) of section 33 shall *mutatis mutandis* apply to an application contemplated in subsection (1) of this section.
- (4) No leasing of a licence approved under this section shall be extended beyond the period of six months specified in paragraph (b) of subsection (1).
- (5) Upon expiry or termination of the lease referred to in subsection (1), or upon expiry of the period for which the leasing of the licensed premises concerned was approved under that subsection, whichever shall first occur, the lessor may resume the business on the licensed premises upon -
- (a) payment to the magistrate of the applicable licence fee in respect of short term leasing imposed by the fourth column of Part II of the first Schedule; and
 - (b) the re-issue of the licence in such lessor's name.

Change of manager

37. (1) If a manager appointed under section 18 -
- (a) leaves the service of the licensee or otherwise ceases to be responsible for the day-to-day managing of the business or undertaking conducted in terms of the licence concerned;
 - (b) becomes a disqualified person;
 - (c) becomes disabled to such an extent that he or she is unable to manage the business or undertaking; or
 - (d) dies,

such licensee shall within a period of seven days after any occurrence contemplated in paragraph (a), (b), (c) or (d), in the prescribed form and manner, notify such occurrence to the magistrate of the district in which the licensed premises are situated.

(2) The licensee referred to in subsection (1) may in terms of section 18 appoint a manager for the licensed business in substitution of the manager referred to in that subsection.

Issue of licences or authorities

38. (1) A certificate in respect of -

- (a) a licence granted under section 27;
- (b) a conditional authority granted under section 30(1); or
- (c) an amendment to a licence granted under paragraph (c) or (d) of section 27(1),

by a Committee, or a licence granted under section 3 or 15 by a Committee Chairperson, as the case may be, or allowed in terms of section 41 on an appeal against a decision taken by a Committee or by a Committee Chairperson, as the case may be, shall against payment of the applicable licence fee imposed by the First Schedule, be issued by the secretary of the Committee, or by a person authorized by the secretary for that purpose.

(2) A certificate in respect of a licence or amendment to a licence granted by a magistrate under section 32, or allowed under section 41 on an appeal against a decision taken by a magistrate, shall against payment of the applicable licence fee imposed by the First Schedule, be issued by the magistrate or by a person authorized by the magistrate for that purpose.

(3) The licence fee referred to in subsection (1) or (2) shall be paid to the magistrate of the district in which the business or undertaking in terms of the licence concerned is conducted.

(4) If the licence fee referred to in subsection (3) is not paid within 21 days after the date of the granting of the application to which such licence fee applies -

- (a) the granting of such application shall lapse; and
 - (b) a certificate contemplated in subsection (1) or (2), as the case may be, in respect of the licence concerned shall not be issued by the secretary or the magistrate, as the case may be.
- (5) Upon payment of an annual fee in respect of a licence in terms of

section 22(2), the magistrate, or a person authorized by the magistrate for that purpose, shall issue in the name of the licensee a certificate of renewal in respect of the licence concerned, valid until 31 March of the year following the date of commencement of such certificate of renewal.

(6) A licence or a certificate in respect of the granting or renewal of a licence issued or purporting to be so issued, and in respect of which the applicable application fees, licence fees or annual fees, as the case may be, have not been duly paid, shall be null and void.

(7) A copy of a licence or of a certificate of renewal, as the case may be, issued under any provision of this Act shall within the prescribed period of time and in the prescribed manner be submitted by the person who issued such licence or certificate, as the case may be, to -

- (a) the Permanent Secretary; and
- (b) (i) the magistrate of the district;
- (ii) the police officer in command of the police of the region; and
- (ii) the secretary of the Committee for the region,

in which the licensed premises are situated, and a copy of such licence or certificate of renewal, as the case may be, shall be retained by the person who issued such licence or certificate, as the case maybe.

(8) If the licence contemplated in subsection (7) is a hotel liquor licence or a parks liquor licence, a copy of such licence shall in addition to the persons referred to in that subsection, be submitted to the Permanent Secretary: Environment and Tourism.

Registers of licences

39. (1) A magistrate, or a person authorized by the magistrate for such purpose, shall keep a register in the prescribed form, in which register the magistrate or other person so authorized shall enter or cause to be entered the prescribed particulars relating to -

- (a) every licence or certificate in respect of a licence issued;
- (b) every certificate of renewal in respect of a licence referred to in paragraph (a);
- (c) every removal, transfer, leasing or change of name relating to a licence referred to in section 32(1);

- (d) every cancellation, suspension, forfeiture, lapse or reinstatement of a licence; and
- (e) the manager of a business or undertaking conducted in terms of the licence concerned, and every change of such manager,

in respect of premises situated in the district concerned.

(2) The register contemplated in subsection (1) shall be open for inspection by members of the public, who shall be entitled to certified extracts from such register upon payment of the prescribed fee.

(3) A document certified by a magistrate and purporting to be an extract from the register kept by him or her in terms of subsection (1) shall in any court of law be *prima facie* proof of the facts contained in such document.

PART IV APPEALS

Liquor licensing appeals

40. (1) The Chief of Lower Courts in the Ministry of Justice, or a magistrate designated by the Chief of Lower Courts for such purpose, shall consider and decide on appeals lodged in terms of section 41, and for the purposes of this section and of that section, a reference to the Chief of Lower Courts includes a reference to a magistrate designated in terms of this subsection.

(2) The Chief of Lower Courts shall, subject to section 41(10), determine the date, time and venue of the hearing of an appeal.

(3) Subject to the further provisions of this section, sections 29 shall *mutatis mutandis* apply to the proceedings before the Chief of Lower Courts when considering an appeal in terms of section 41.

(4) The Minister may prescribe the proceedings at the hearing of an Appeal not provided for in this Act.

The lodging and hearing of Appeals

41. (1) Any -

- (a) applicant referred to in section 3, 15, 27 or 32; or
- (b) person or group of persons referred to in subsection (1) of section 28 who was a party to, or who appeared and was heard at, proceedings in terms of section 29 or 32, as the case may be,

and who wishes to appeal against a decision by the Committee Chairperson,

by a Committee or by a magistrate, as the case may be, taken under any provision of this Act, may, within 14 days after such decision was taken, appeal to the Chief of Lower Courts against such decision so taken by lodging a notice of appeal in terms of subsection (2).

(2) A notice of appeal referred to in subsection (1) shall be in the prescribed form and may against payment of the fees in respect of the lodging of a notice of appeal imposed by Part III of Schedule 1, be lodged with the secretary of the Committee, the Committee Chairperson or the clerk of the magistrate's court concerned, as the case may be, who or which made the decision which is appealed against.

(3) Copies of the notice of appeal lodged in terms of subsection (2) shall be prepared by the secretary of the Committee or the clerk of the magistrate's court concerned, as the case may be, and such copies shall in terms of subsection (4) be served on the applicant concerned, if he or she is not the appellant.

(4) Service of the copies of the notice of appeal in terms of subsection (3) shall be effected -

- (a) by such person;
- (b) in such manner; and
- (c) against payment of such fee, if any,

as prescribed.

(5) The secretary of the Committee or the clerk of the magistrate's court, as the case may be, shall within seven days after the lodging of the notice of appeal in terms of subsection (2), forward the record of the proceedings concerned, including a copy of the decision appealed against and such other documents or particulars as may be prescribed, to the Chief of Lower Courts.

(6) The Chief of Lower Courts shall, subject to subsection (10), give the appellant and the parties referred to in subsection (1) in the prescribed form and manner, and within the prescribed period of time, notice of the date, time and venue determined under section 40(2) for the hearing of the appeal lodged in terms of subsection (2) of this section.

(7) The appellant, or a person or group of persons referred to in subsection (1) and who gave evidence at the hearing where the decision appealed against was taken, may -

- (a) in writing make specific or general submissions to the Chief of Lower Courts concerning the proceedings appealed against, provided that section 28(4) shall *mutatis mutandis* apply to any submission so made; or

(b) if so requested by the Chief of Lower Courts, appear at the hearing of the appeal concerned and give evidence under oath at such hearing.

(8) Any person giving evidence at a hearing as contemplated in paragraph (b) of subsection (7), may be cross-examined by the appellant, or by the applicant referred to in subsection (3), or by the Chief of Lower Courts.

(9) The Chief of Lower Courts shall not consider any submission made by any person referred to in paragraph (a) of subsection (7) if such person, without the written approval of the Chief of Lower Courts, fails to appear at the hearing of the appeal concerned.

(10) The Chief of Lower Courts shall not later than 60 days after the date of the lodging of the notice of appeal in terms of subsection (2), or within such longer period of time as the Minister may determine, consider the appeal and, after hearing the appellant or any other party referred to in subsection (7) who may appear before the Board, either -

- (a) allow the appeal; or
- (b) dismiss the appeal; or
- (c) allow the appeal subject to such conditions as the Chief of Lower Courts may deem appropriate.

(11) The Chief of Lower Courts shall in writing furnish reasons to the appellant for a decision taken in terms of subsection (10).

(12) The Chief of Lower Courts shall transmit a copy of the decision taken by him or her, together with the reasons furnished in terms of subsection (11), signed by the Chief of Lower Courts, to the secretary of the Committee or to the clerk of the magistrate's court concerned, as the case may be.

(13) Upon receipt of a copy of a decision referred to in subsection (12), the secretary of the Committee or the magistrate, as the case may be, shall, if so ordered by the Chief of Lower Courts, in terms of section 38 issue the relative licence, conditional authority or amended licence.

PART V LICENCE REQUIREMENTS AND RESTRICTIONS

Supply of non-alcoholic refreshments

42. (1) Subject to subsection (5), the holder of an off-sales licence shall during the hours when liquor is offered for sale on the licensed premises, in addition to so offering such liquor for sale, offer for sale on such premises

not less than two different kinds of non-alcoholic drinks in sealed containers for consumption away from such premises.

(2) The holder of an on-consumption licence shall during the hours when liquor is offered for sale on the licensed premises, offer for sale on such premises snack-foods or meals, and not less than two different kinds of non-alcoholic drinks, for consumption on such premises.

(3) The Minister may by notice in the *Gazette* further define, extend, restrict, prohibit or vary the non-alcoholic drinks, snack foods or meals referred to in subsection (1) or (2).

(4) The non-alcoholic drinks referred to in subsections (1) or (2) shall not include any prohibited drink contemplated in Part VI, or prohibited by or under any other law.

(5) This section shall not apply to a wholesale liquor licence, a distillery licence, a vineyard licence or brewery depot licence.

No duty to trade

43. (1) A licensee does not have an obligation to keep the licensed premises open for the sale of liquor at all times, or at any time, during the hours, or on the days, permitted for such sale of liquor.

(2) Subsection (1) does not exempt a licensee from any duty or obligation in terms of this Act or of any other law to have available or to provide any amenity or service while the licensed premises are open for the purpose of the sale of liquor.

Other business on certain licensed premises

44. (1) Subject to section 42, or to any condition imposed or privilege granted under this Act by the Committee, the Committee Chairperson or the magistrate, as the case may be, it shall be a condition of every bottle store licence and brewery depot licence that the licensee shall not conduct the licensed business in or upon any premises in or upon which any other business whatsoever is conducted.

(2) For the purposes of subsection (1), premises shall not be deemed separate if -

(a) such premises are -

(i) under the same roof; and

(ii) not completely separated from one another by a wall or other solid partition having no door, window or opening; or

- (b) any means of direct access from one premises to the other premises exists.

(3) The Minister may by notice in the *Gazette* determine the articles, items or business, as the case may be, which may be kept, sold or conducted in or on any licensed premises in addition to the articles, items or business, as the case may be, which may be kept, sold or conducted in or on such licensed premises in terms of this Act.

Consumption on and away from premises

45. (1) It is a condition of an off-sales licence, excluding a vineyard liquor licence, that, subject to subsection (3), no liquor shall be consumed upon, at or in the licensed premises, or upon, at or in an adjoining or adjacent premises, or upon, at or in any other place occupied or controlled by the licensee.

(2) It is a condition of an on-consumption licence, excluding a vineyard liquor licence, that liquor sold upon the licensed premises concerned shall be consumed on, and not be removed from, such premises.

(3) Notwithstanding subsection (1), the magistrate of the district in which a licensed bottle store premises are situated, may at any time, upon an application in the prescribed form and manner by the holder of the licence in respect of such bottle store, in writing grant an approval to such holder to, subject to subsection (4) and to section 56, supply samples of liquor free of charge to any customer for consumption on or away from such premises.

(4) The samples of liquor referred to in subsection (3) shall be supplied in such quantities and manner and in or on such part of the premises, and subject to such further conditions, as the magistrate may specify in the approval granted under that subsection, including the date or dates and hours upon or during which such samples may be so supplied.

Further off-sales conditions

46. (1) It is a condition of a bottle store licence or of a grocery liquor licence -

- (a) that no bottling of liquor be undertaken by the licensee; and
(b) that all liquor be sold in sealed containers.

(2) No off-sales licensee, except the holder of a parks liquor licence, shall sell or deliver liquor on a closed day, except to another licensee.

Liquor to be sold during business hours only

47. A licensee or his or her employee or agent, or any other person

acting on behalf of such licensee, shall not, except within the prescribed hours of business, sell, supply or deliver any liquor to any person other than a licensee.

Brand reliability and alcohol content

- 48.** No licensee shall sell -
- (a) as a particular kind or brand of liquor, or as liquor produced by a particular person, any liquor which is not of such kind or brand, or which is not produced by such person; or
 - (b) any liquor in a sealed container, unless such container has a label attached to it stating the alcohol content of such liquor, expressed in a percentage by volume.

Display of licence and other notices

49. A licensee shall, when the licensed premises is open for business, prominently display in any part of the licensed premises which is open to the public -

- (a) the original licence in respect of the premises and, where applicable, a current and valid certificate of renewal in respect of such licence; and
- (b) a notice in the prescribed form stating that it is prohibited by law to sell to any person under the age of 18 years any drink containing more than three per cent of alcohol by volume.

Alterations to licensed premises

50. No structural alteration or addition to any licensed premises shall be made without the approval in writing granted by -

- (a) in respect of an accommodation establishment, the Committee Chairperson, in consultation with the Permanent Secretary : Environment and Tourism, which approval may be so granted upon an application made by the licensee concerned in the prescribed form and manner; or
- (b) in respect of any licensed premises other than an accommodation establishment, the Magistrate, which approval may be so granted upon an application made by the licensee in terms of paragraph (f) of section 32(1).

Managers of accommodation establishments

51. The manager of a hotel appointed under section 18 shall reside on the licensed premises in respect of which he or she is so appointed, unless the

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Committee Chairperson, in consultation with the Permanent Secretary : Environment and Tourism, upon an application made by the licensee in the prescribed form and manner, and subject to such conditions as the Committee Chairperson, in consultation with that Permanent Secretary, may determine, in writing grants an exemption for a specified period of time.

Certain licence holders not to own certain other licensed businesses

52. (1) A producer or manufacturer of liquor, whether in or outside Namibia, or any person who has a controlling interest in a company or other body corporate, partnership or other association of persons, whether corporate or unincorporate, which is such a producer or manufacturer, may not directly or indirectly procure or hold a financial interest in a business to which any licence relates, other than -

- (a) a hotel liquor licence;
- (b) a wholesale liquor licence;
- (c) a brewery depot licence;
- (d) a distillery licence;
- (e) a vineyard liquor licence; or
- (f) a bottle store licence held by a hotel liquor licensee under section 9(3).

(2) The holder of any licence, other than a hotel liquor licence, a wholesale liquor licence, a brewery depot licence, a distillery licence or a vineyard liquor licence, or any person who has a controlling interest in a company or other body corporate, partnership or other association of persons, whether corporate or unincorporate, which is such a holder, may not directly or indirectly acquire a financial interest in the business of a producer or manufacturer referred to in subsection (1).

(3) Subsection (2) shall not apply to the holding of publicly traded shares in a public company incorporated under the Companies Act, 1973 (Act 61 of 1973).

(4) Any contract, deed or other instrument in terms of which a financial interest is, or is purported to be, acquired contrary to this section shall be void *ab initio*.

Ties.

53. (1) For the purposes of this section, "tie" means any agreement, understanding or condition whereby any person is directly or indirectly bound at any time -

- (a) to purchase liquor of any particular kind or brand from or through any particular person, whether or not in conjunction with any other article, or whether or not to the exclusion in whole or in part of any purchase from any other person;
 - (b) to purchase or keep in stock liquor of a particular kind only, or produced, manufactured or brewed only by any particular producer, manufacturer or brewer;
 - (c) not to purchase liquor of a particular kind, or not to purchase any liquor from or through any particular person; or
 - (d) not to sell or keep in stock any liquor produced, manufactured or brewed by any particular producer, manufacturer or brewer.
- (2) Any tie entered into shall be void and not binding upon any of the parties to such tie.
- (3) This section shall not apply to any condition attached to the supply or use of appliances, containers or equipment at the point of sale of liquor.

Restriction on credit and payment

- 54.** (1) No person shall, in a public bar or a shebeen -
- (a) for the purpose of consumption, supply to any other person; or
 - (b) consume,
- any liquor, unless such liquor is paid for at the time of such supply or consumption, as the case may be.
- (2) Subject to subsection (4), no person shall -
- (a) pay, or accept payment by way of -
 - (i) a post-dated cheque;
 - (ii) a bill or instrument payable at a future date; or
 - (iii) a pledge, bond, assignment, deposit or barter,for or in respect of any liquor supplied; or
 - (b) obtain or supply any liquor on credit.
- (3) Any credit, debt, bill, instrument, pledge, bond, assignment, deposit or barter referred to in subsection (2) shall be void and unenforceable.

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(4) This section shall not apply to transactions relating to the supply of liquor -

- (a) between licensees;
- (b) between licensees and brewers or producers licensed or authorized under any law referred to in section 59;
- (c) on licensed club premises;
- (d) if payment in respect of the transaction or supply is effected by means of a credit card recognised by the Bank of Namibia;
- (e) by the holder of a hotel liquor licence to a guest of the hotel in respect of which such licence is held, if such guest is registered with such hotel as an over-night guest or as a guest for a period of not less than 12 hours; or
- (f) between the holder of an off-sales licence and his or her customer.

(5) The Minister may, by notice in the *Gazette*, add additional transactions to, or delete transactions from, subsection (4).

Supply of liquor to employees

55. No person shall supply any liquor to any person in his or her employ in lieu of, as part of or as supplementing, the employee's wages or remuneration.

Supply of alcoholic substances to persons under the age of 18 years

56. No licensee, or manager or employee of such licensee, shall, in the course of business conducted in terms of a licence, sell to any person under the age of 18 years, or supply such person with, any drink or substance which contains more than three per cent of alcohol by volume.

Consumption of liquor in a public place

57. No person shall consume liquor in a public place.

**PART VI
CONTROL OF CERTAIN ALCOHOLIC SUBSTANCES
AND PROHIBITIONS**

Prohibited concoctions, brews and drinks

58. (1) A person may without a licence, manufacture or have in his or her possession or custody, any traditional drink at any point in time.

(2) No person shall manufacture, have in his or her possession or custody, or sell or supply to any person, or consume any other drink, brew or concoction manufactured by means of the process of fermentation of any substance, the consumption of which drink, brew or concoction would, in the opinion of the Minister, be harmful or injurious to the health or well-being of any person, and which drink, brew or concoction the Minister by notice in the *Gazette* declares a prohibited drink, brew or concoction.

Prohibited production

59. No person shall manufacture or produce any alcoholic drink, brew or concoction by means of the process of the fermentation of sugar, treacle, malt or other substances, or by the distillation of a fermented or distillate product, which drink, brew or concoction contains more than three per cent of alcohol by volume, for the purpose of selling or supplying such drink, brew or concoction to any other person unless the person manufacturing or brewing such drink, brew or concoction holds a licence under the Brewers and Distillers Licences Duty Proclamation, 1924 (Proclamation 3 of 1924), or an excise permit under the Customs and Excise Act, 1964 (Act 91 of 1964), authorizing such person to manufacture or produce such drink, brew or concoction.

Methylated spirit

60. The Minister may -

(a) make regulations relating to -

- (i) the regulation, restriction or prohibition in respect of the manufacture, import, export, keeping, stocking, bottling, packaging, conveyance, possession, sale, supply or use of;
- (ii) the persons who may manufacture, deal in, supply or possess;
- (iii) the records that shall be kept by the persons referred to in subparagraph (ii) in respect of the manufacture, import, export, keeping, stocking, bottling, packaging, conveyance, possession, sale, supply or use of;
- (iv) the permissible or requisite denaturation, odorization, colouring and rendering non-potable of; and
- (v) the issuing of permits relating to the manufacture, import, export, keeping, stocking, bottling, packaging, conveyance, possession, sale, supply of, or dealing in,

methylated spirit;

(b) except as otherwise provided in this Act, prescribe a fine not exceeding N\$3000 or a period of imprisonment not exceeding 12 months or both such fine and such imprisonment as a penalty for

the contravention of any regulation made under paragraph (a), or the failure to comply with any such regulation; or

- (c) by notice in the *Gazette*, from time to time declare any denatured, medicated or otherwise treated spirit or substance to be methylated spirit for the purposes of this Act.

Yeast

61. The Minister may -

- (a) make regulations relating to -
- (i) the regulation, restriction or prohibition in respect of the manufacture, import, export, keeping, stocking, bottling, packaging, conveyance, possession, sale, supply or use;
 - (ii) the licensing of factories or persons in respect of the manufacture or packaging;
 - (iii) the keeping of registers and other records in respect of the manufacture, import, export, possession, stocking, sale, supply, conveyance or use; or
 - (iv) the composition or ingredients,
- of yeast; or
- (b) except as otherwise provided in this Act, prescribe a fine not exceeding N\$3000 or a period of imprisonment not exceeding 12 months or both such fine and such imprisonment as a penalty for the contravention of any provision of a regulation made under paragraph (a) or the failure to comply with any such regulation.

PART VII CONTROL AND INSPECTIONS

Inspection of premises

62. (1) Subject to Article 13 of the Namibian Constitution, a Committee Chairperson, or any other member of the Committee concerned authorized thereto in writing by the Committee Chairperson, or an inspector, may at all reasonable times, in the region for which such Committee was established, enter upon and inspect -

- (a) any premises in respect of which an application for the granting of a licence or other authority or approval is pending; or

- (b) any licensed premises for the purpose of making a general inspection of such premises.

(2) Subject to Article 13 of the Namibian Constitution, a district health officer or the officer commanding the police of the district in which any licensed premises are situated, or any person authorized thereto in writing by such district health officer or police officer, may at all reasonable times enter and inspect any licensed premises or any premises in such district in respect of which an application for the granting of a licence, approval or authority has been lodged, for the purpose of obtaining information for any report to be furnished in terms of this Act in respect of such premises or for ascertaining compliance with, or performance of any condition applicable to, a licence, or for performing any other duty which such district health officer or such police officer may perform under this Act.

(3) A person exercising any power or performing any duty under this Part shall, on demand by any person affected by the exercising or performing of such powers or duties, produce proof of his or her identity and of his or her appointment or authority to exercise such powers or perform such duties.

Police powers of entry and seizure and to demand names of persons

63. (1) A member of the police may, subject to Article 13 of the Namibian Constitution -

- (a) at any time enter and inspect or search any land, premises, room or vehicle, or any part thereof, in respect of which there are reasonable grounds to suspect that a contravention of any provision of this Act is being, or is about to be, committed; or
- (b) enter any premises on or in which liquor is being sold and demand that the current licence authorizing such sale be exhibited to such member of the police.

(2) A member of the police referred to in subsection (1) may, subject to subsection (5), seize and remove from any land, premises, room or vehicle referred to in subsection (1) any article or thing -

- (a) if such member of the police has reason to suspect that the possession of, or keeping of such article or thing on or in such land, premises, room or vehicle is unlawful; or
- (b) in respect of which article or thing such member of the police has reason to suspect an offence has been or is being committed,

in terms of any provision of this Act.

(3) A member of the police may demand the name and address of any

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person whom he or she finds on or in any land, premises, room or vehicle which he or she searches in terms of subsection (1) or from which he or she removes any liquor under subsection (2).

- (4) Any person to whom a demand is made under subsection (3) and who -
- (a) fails to furnish his or her full name or address to the member of the police making such demand; or
 - (b) furnishes to the member of the police making such demand a name and address which such member of the police upon reasonable grounds suspects to be false or misleading,

may be arrested and detained by such member of the police until the name and address of such person have been ascertained or verified, subject thereto that such person shall not be so detained for a period exceeding twelve hours.

(5) A member of the police referred to in subsection (2) shall, if he or she seizes any article or thing under that subsection, issue a receipt in the prescribed form in respect of such article or thing so seized and shall hand such receipt to the person in whose possession or under whose control such article or thing was found.

Report by police or district health officer

64. (1) Whenever the district health officer or the officer commanding the police of the district wherein licensed premises are situated, is of the opinion that -

- (a) in order to prevent interference with any amenity situated, or the rights of any person living, within a distance of one kilometre from the licensed premises;
- (b) by reason of the unsatisfactory condition or state of repair of the licensed premises;
- (c) by reason of the unsatisfactory conduct of the licensee or the manager of the business conducted on the licensed premises; or
- (d) by reason of the of non-compliance with, or the breach of, any condition applicable to the licence concerned,

the Committee established for the region concerned should exercise any of its powers under subsection (4) in respect of such licence, such health officer or police officer, as the case may be, shall in writing report the matter to the Committee Chairperson.

(2) Upon receipt by the Committee Chairperson of a report contemplated in subsection (1) -

- (a) the Committee Chairperson shall within the prescribed period of time and in the prescribed manner convene a meeting of the Committee to consider such report; and
- (b) the secretary shall, not less than within the prescribed period of time prior to the date of the meeting convened in terms of paragraph (a) -
 - (i) serve on the licensee and the person who submitted such report; and
 - (ii) if such licence is a hotel liquor licence or parks liquor licence, in addition serve on the Permanent Secretary: Environment and Tourism,

a copy of such report and a notice stating the venue, date and time of such meeting.

(3) Any person referred to in paragraph (b) of subsection (2) may at the meeting of a Committee convened in terms of paragraph (a) of that subsection be present and make representations.

(4) A person referred to in subsection (3) may, if he or she appears in person at a meeting of a Committee, be represented by a legal practitioner.

(5) A Committee may at the meeting contemplated in subsection (3), after considering the report referred to in subsection (2) and hearing such persons as may appear at the meeting -

- (a) in a case other than a case concerning a hotel liquor licence or a parks liquor licence -
 - (i) cancel the licence concerned forthwith or from a future date;
 - (ii) suspend such licence for such period of time as the Committee may deem appropriate; or
 - (iii) rescind or amend any existing conditions in respect of such licence, or impose additional conditions; or
- (b) in a case concerning a hotel liquor licence or a parks liquor licence, recommend to the Permanent Secretary : Environment and Tourism any of the actions contemplated in paragraph (a),

and shall to all such persons furnish reasons for any decision taken pursuant to this section.

- (6) The Permanent Secretary : Environment and Tourism may, on receipt

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of a recommendation made in terms of paragraph (b) of subsection (5), in respect of a hotel liquor licence or of a parks liquor licence, execute any of the powers mentioned in subparagraph (i), (ii) or (iii) of paragraph (a) of that subsection.

Petition by residents

65. (1) A petition in writing signed by not less than 15 adult persons who are resident within a distance of one kilometre from a licensed premises situated in a municipality, town or village, as the case may be, or within a distance of twenty kilometres from a licensed premises situated outside a municipality, town or village, may be lodged with the secretary of the Committee of the region in which the licensed premises are situated, requesting that such Committee consider that the licence concerned be -

- (a) cancelled;
- (b) suspended for a specified period of time;
- (c) amended in respect of conditions pertaining to such licence; or
- (d) reviewed in respect of any matter pertaining to such licence.

(2) A petition lodged in terms of subsection (1) shall -

- (a) in general state the grounds for the request contained in; and
- (b) nominate a person to accept, and an address for service of, notices relating to,

such petition.

(3) Upon receipt of a petition contemplated in subsection (1) -

- (a) the Committee Chairperson shall in the prescribed form and manner, and within the prescribed period of time, convene a meeting of the Committee to consider such petition; and
- (b) the secretary shall, within the prescribed period of time after convening the meeting in terms of paragraph (a) -
 - (i) serve on the licensee and the person nominated in terms of paragraph (b) of subsection (2); and
 - (ii) if the licence concerned is a hotel liquor licence or a parks liquor licence, serve on the Permanent Secretary : Environment and Tourism, in addition to the service contemplated in subparagraph (i),

a copy of the petition concerned and a notice stating the venue, date and time of such meeting.

(4) At the hearing by the Committee contemplated in subsection (3), any resident referred to in subsection (1), whether or not a signatory to the petition concerned, may appear in person before the Committee and make submissions, give evidence or, with the consent of the Committee Chairperson, call witnesses in support of or against the petition.

(5) A resident referred to in subsection (4) may, if he or she appears in person before the Committee, be represented by a legal practitioner.

(6) A Committee may at the meeting contemplated in subsection (3), and after hearing such persons as may appear at such meeting -

- (a) in a case other than a case concerning a hotel liquor licence or a parks liquor licence -
 - (i) cancel the licence concerned forthwith or from a future date;
 - (ii) suspend such licence for such period of time as the Committee may deem appropriate; or
 - (iii) rescind or amend any existing conditions in respect of such licence, or impose additional conditions; or
- (b) in a case concerning a hotel liquor licence or parks liquor licence, recommend to the Permanent Secretary: Environment and Tourism any of the actions contemplated in paragraph (a).

(7) The Permanent Secretary : Environment and Tourism may, on receipt of a recommendation made in terms of paragraph (b) of subsection (6), in respect of a hotel liquor licence or a parks liquor licence, execute any of the powers mentioned in subparagraph (i),(ii) or (iii) of paragraph (a) of that subsection.

Temporary closure of licensed premises during tumult

66. (1) When a strike or lock-out is in progress, or a riot or tumult occurs or is expected to occur in any place, the magistrate, or in his or her absence, a police officer of or above the rank of warrant officer, may in the prescribed form and manner order any licensed premises in, or within the prescribed distance from, such place to be closed for such period of time as such magistrate or police officer, as the case may be, may deem appropriate.

(2) The licensee referred to in subsection (1), or his or her manager, shall forthwith comply with the order contemplated in that subsection, and upon failure to do so, the person issuing the order may take such action, or

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have such force used, as such person may deem reasonably necessary for the temporary closing of the premises concerned in terms of such order.

(3) If the person who issued an order contemplated in subsection (1) is of the opinion that no cause for the continuation of such order exists, such person shall cancel such order in the prescribed form and manner.

Inspectors of premises

67. (1) The Minister may, subject to the Public Service Act, 1995 (Act 13 of 1995), designate officers in the Ministry of Trade and Industry as inspectors of premises, which inspectors shall perform the duties and exercise the powers specified in this Act or as may be prescribed.

(2) A secretary shall *ex officio* be an inspector of premises.

**PART VIII
JUDICIAL MATTERS****Liability of licensees, managers and other persons**

68. (1) A person who at any time is managing, supervising or conducting a licensed business for or on behalf of a licensee, shall be subject or liable to the same duties, obligations or penalties as such licensee is subject or liable to in terms of this Act or of any other law.

(2) Subsection (1) shall not release the licensee from any duty, obligation or penalty which he or she has or may become subject to or may incur in terms of this Act or of any other law.

Death or disability of licensee or applicant

69. (1) If a licensee or a person to whom an authority or approval has been granted under this Act -

- (a) is declared insolvent; or
- (b) is declared incapable of managing his or her own affairs,
under any law; or
- (c) dies,

or if the business conducted in terms of the licence concerned is placed under judicial management, the executor, curator, judicial manager or liquidator, as the case may be, appointed for or in respect of such licensee or person or business, may, subject to subsection (2) or to any other law, carry on the licensed

business, or effect or complete the requirements imposed in such authority or approval, as the case may be, with the same powers and functions, and subject to the same duties, restrictions and penalties, as if such executor, curator, judicial manager or liquidator, as the case may be, were such licensee or person.

(2) An executor, curator, judicial manager or liquidator referred to in subsection (1) shall before commencing with any duty or assuming any power in terms of that subsection, submit to the secretary written proof of his or her appointment as such executor, curator, judicial manager or liquidator, as the case may be.

(3) If an applicant, before the date of hearing of his or her application, dies or becomes subject to any disability contemplated in subsection (1), the Committee, the Committee Chairperson or the magistrate, as the case may be, may, subject to subsection (4), at the discretion of such Committee, Committee Chairperson or magistrate, grant the licence, authority or approval in the name of the executor, curator, judicial manager or liquidator, as the case may be, appointed for or acting on behalf of such applicant.

(4) Subsection (3) shall not apply to an application for a temporary liquor licence.

Offences by licensees or managers

70. A licensee or manager, or any person employed by or acting for or on behalf of a licensee or of a manager, who -

- (a) allows drunkenness or riotous conduct to take place upon the licensed premises; or
- (b) sells or supplies liquor to any person who is, or appears to be, intoxicated; or
- (c) sells liquor in contravention of section 48, unless he or she satisfies the court that he or she was not a party to, had no knowledge of and had no means of detecting or preventing the selling of liquor in contravention of that section; or
- (d) allows to be in any bar upon the licensed premises any person who is, in terms of this Act or of any other law, or of any condition imposed under this Act or such other law, not permitted to be in such bar; or
- (e) allows any unlawful game or gambling to be carried on upon the licensed premises; or
- (f) sells liquor on the licensed premises at a time or on a day when, or at a place where, such sale is not authorized by this Act or in terms of the conditions of the licence in respect of such premises; or

- (g) allows liquor to be consumed on the licensed premises at a time or on a day when, or at a place where, the consumption of such liquor is prohibited by this Act or not authorized in terms of the conditions of the licence in respect of such premises; or
- (h) sells, supplies or deals in liquor in contravention of section 56, or in a manner not authorized by this Act or by the conditions in respect of the licence in terms of which the business on the licensed premises is conducted; or
- (i) if such person is a licensee, employs a disqualified person as a manager; or
- (j) fails to render assistance to the best of his or her ability to any member of the Namibian Police Force engaged in the performance of his or her duties in terms of this Act, in or in the immediate vicinity of the licensed premises, or in any way obstructs or hinders any member of the Namibian Police Force in the performance of such duties; or
- (k) fails to comply with any condition imposed in respect of a licence; or
- (l) fails to display a licence or notice in terms of section 49,

shall be guilty of an offence.

Offences in general

- 71.** (1) Any person, whether or not he or she is a licence holder, who -
- (a) refuses or fails to comply with a demand made in terms of any provision of this Act by any member of the Namibian Police Force or by an inspector to furnish information relating to the name or address of such person, or to produce a licence or other document; or
 - (b) obstructs or hinders any member of the Namibian Police Force, inspector or other person in the performance of any duty in terms of this Act; or
 - (c) unlawfully and with the intent to deceive -
 - (i) alters, destroys, damages or renders illegible;
 - (ii) withholds from any person entitled to take possession or to scrutinize; or

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- (iii) uses fraudulently or for any unlawful purpose,

any licence, authority, certificate or other document issued under,
or for the purpose of, this Act;
- (d) submits to the Permanent Secretary, to the Permanent Secretary :
Environment and Tourism, to the Chief of Lower Courts, to a
Committee, to a Committee Chairperson or to a magistrate any
written information, whether or not on affidavit, which information
he or she knows to be false, or any forged document or document
which purports to be, but which is not, a true copy of the original of
a document, or in any way assists any person in such submission of
such document; or
- (e) gives false evidence on oath or affirmation before the Chief of Lower
Courts, a Committee, a Committee Chairperson or a magistrate at a
hearing or at an inquiry held in terms of this Act, knowing such
evidence to be false; or
- (f) acts as a member of a Committee or takes part in the hearing of, or
the taking of a decision in respect of, an application for a licence,
knowing that he or she is disqualified from so acting as a member
or so taking part in such a hearing or the taking of such a decision,
or makes a false declaration relating to his or her qualification to so
act or to so take part; or
- (g) refuses or fails to leave any licensed premises when requested to
do so by the licensee or by the manager, agent or an employee of
the licensee, or by a member of the Namibian Police Force, as the
case may be, or enters or is upon any restricted portion of any
licensed premises, knowing that his or her presence upon such
premises, or such restricted portion of such premises, is unlawful;
or
- (h) is or becomes intoxicated or violent, or conducts himself or herself
in a disorderly manner, upon any licensed premises; or
- (i) is or becomes intoxicated in, in the vicinity of or near -
 - (i) any road, street, avenue, park, thoroughfare or public place; or
 - (ii) any shop, warehouse, service station or garage; or
 - (iii) any place of entertainment, restaurant or race course; or
 - (iv) any other place to which the public is admitted or has access,
whether against payment or otherwise, and whether or not
the right of admission to such place is reserved; or

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- (v) any aircraft, railway carriage, passenger vessel, bus or other means of public transport; or
- (j) subject to subsection (2), in any local authority area, consumes any liquor in any street, road, avenue, park or other public place, or on vacant land adjoining any such street, road, avenue, park or other public place, or in public view; or
- (k) introduces into, possesses or consumes any liquor in any portion of a sportsground to which members of the public have or are granted access, except on such portion of such sports ground as may constitute licensed premises at the time of such possession or consumption; or
- (l) purchases or obtains any liquor at a time when, or at a place at which, or in circumstances in which, it is unlawful for such liquor to be sold or supplied to, or to be obtained by, him or her; or
- (m) removes from the premises of a business conducted in terms of an on-consumption licence any liquor which has been sold or supplied for consumption on such premises; or
- (n) sells, supplies or delivers liquor in contravention of, or in any manner other than as provided for in, section 2(1) or any other provision of this Act; or
- (o) allows another person to, in contravention of section 34, obtain a controlling interest in a business conducted in terms of a licence; or
- (p) enters into a tie in contravention of section 53; or
- (q) supplies or consumes liquor in contravention of section 54 or 57; or
- (r) supplies any liquor to any person in contravention of section 55; or
- (s) sells or supplies any drink or substance referred to in section 56 to a person under the age of 18 years; or
- (t) manufactures, has in his or her possession or custody, or consumes, sells or supplies any drink or alcoholic concoction referred to in section 58; or
- (u) manufactures or produces any prohibited alcoholic concoction in contravention of section 59; or
- (v) fails to comply with any demand made in terms of section 62(3); or

- (w) fails, upon a demand made by a member of the police in terms of section 63, to furnish such member of the police with the information or document so demanded; or
- (x) fails to comply with an order made under section 66(1); or
- (y) fails to comply with a notice under section 75,

shall be guilty of an offence.

(2) Paragraph (j) of subsection (1) shall not apply in respect of the consumption of liquor on vacant land referred to in that paragraph if such liquor is sold and supplied on such land in terms of an on-consumption licence.

(3) Any person who aids and abets any other person in the commission of any offence in terms of this section, or who is an accessory to the commission of such an offence, shall be guilty of an offence and on conviction be liable to the same penalties such other person will on conviction be liable to.

Penalties

72. (1) Subject to subsection (2) or (3), as the case may be, a person who is found guilty of an offence in terms of section 70 or 71 shall in respect of such offence -

- (a) on a first conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;
- (b) on a second or subsequent conviction be liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) On a third or subsequent conviction of a licensee or other person for a contravention of any of the provisions of paragraph (c), (d), (e), (f) or (i) of section 70, or of paragraph (a), (b), (c), (d), (e), (g), (h), (l) or (n) of subsection (1) of section 71, the Court may, in lieu of, or in addition to, any penalty which it may impose -

- (a) cancel the licence held by such licensee; or
- (b) declare such licensee or other person so convicted a disqualified person for the purpose of obtaining a licence or acting as a manager.

(3) A person who is found guilty of the contravention of paragraph (e) of subsection (1) of section 71, shall on conviction be liable to the penalties prescribed by law for the crime of perjury.

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(4) A conviction in respect of the contravention of any provision of any law repealed by this Act shall, for the purposes of this section, be deemed a previous conviction in respect of a contravention of the corresponding provision of this Act.

Forfeiture of seized liquor

73. Liquor or any other article seized under this Act or under the Criminal Procedure Act, 1977 (Act 51 of 1977), shall together with any vessel or vehicle in which such liquor is contained, stored or transported, be forfeited to the State, unless the person in whose possession such liquor or other article was when it was seized -

- (a) is prosecuted in respect of such liquor or other article, and the court finds that such liquor or other article was not in the possession of such person in contravention of any provision of this Act or of any other law; or
- (b) is not brought before a competent court on charges relating to such liquor or other article within a period of 30 days after the date upon which such liquor or other article was found in his or her possession.

Disposal of liquor on termination or cancellation of licence

74. (1) The holder of a licence which has terminated or has been cancelled, as the case may be, may, within a period of 30 days after the date -

- (a) on which such licence has so terminated or so been cancelled; or
- (b) of the final determination of an appeal against, or of a review of, a cancellation of a licence contemplated in paragraph (a), if any, and if such appeal or review confirmed the cancellation of the licence, or after the withdrawal of such appeal, as the case may be,

on the premises in respect of which the licence was held or at such other place as the magistrate may determine, sell by public auction through an auctioneer, any liquor which the holder of such licence had in stock on the licensed premises on the date of termination or cancellation of the licence, as the case may be, and which liquor has not been forfeited to the State in terms of section 73.

(2) No portion of any application fee or of any licence fee paid in respect of a licence terminated or cancelled as contemplated in subsection (1) shall be refunded.

Return of licence

75. If -

- (a) a court under any law cancels a licence; or

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- (b) the Chief of Lower Courts acting under section 41, or a Committee or the Permanent Secretary: Environment and Tourism acting under section 64 (6) or 65 (7) -
 - (i) cancels a licence;
 - (ii) varies or amends the conditions relating to a licence; or
 - (iii) imposes new or additional conditions in respect of a licence,

the clerk of the magistrate's court of the district wherein the licensed premises are situated shall in writing notify the licensee to submit such licence to the clerk of the court within such reasonable period of time as specified in such notice, for the cancellation of, or the necessary amendment to, such licence, as the case may be.

**PART IX
GENERAL AND SUPPLEMENTARY**

Exempt transactions

76. This Act shall not apply to -
- (a) any person who carries on business as a general dealer *bona fide* selling spirituous or distilled perfumery or medicated spirits other than methylated spirits;
 - (b) any pharmacist or any medical practitioner registered under the Pharmacy Profession Act, 1993 (Act 23 of 1993) or the Medical and Dental Professions Act, 1993 (Act 21 of 1993), as the case may be, *bona fide* selling or administering for purely medicinal purposes any substance containing alcohol; or
 - (c) any person supplying substances to a pharmacist or medical practitioner referred to in paragraph (b), or to a hospital or health facility established or registered under the Hospitals and Health Facilities Act, 1994 (Act 36 of 1994).

Exemptions from licensing

77. The provisions of this Act relating to applications for and holding of licences shall not apply to -
- (a) the sale of liquor in the National Assembly or National Council;
 - (b) the sale of liquor at a State airport or aerodrome in terms of a permission granted under section 6 bis of the Aviation Act, 1962 (Act 74 of 1962);

- (c) any person in his or her capacity as -
- (i) an executor, administrator or liquidator of a deceased or insolvent estate, in the administration of such estate;
 - (ii) an officer as defined in section 1(1) of the Customs and Excise Act, 1964 (Act 91 of 1964);
 - (iii) a sheriff, deputy sheriff, member of the police, messenger of the court or other officer of a court, acting in terms of an order of a court; or
 - (iv) an auctioneer acting on instructions of a person referred to in this paragraph,
- and who is, in the performance of such person's functions or duties in such capacity, selling liquor forming part of the assets of an estate or of property under execution;
- (d) any vessel in the territorial waters of Namibia in the course of a voyage of not less than 500 kilometres; or
- (e) the sale of liquor by an insurer who in terms of a policy of insurance compensates an insured for the loss of such liquor, and who then subsequent to the payment of such compensation, recovers such liquor.

Condonation of defective applications

78. If -

- (a) an application made in terms of this Act, or a document accompanying such application, is defective in any respect; or
- (b) an applicant fails to lodge any required document in support of an application,

a Committee, a Committee Chairperson or a magistrate, as the case may be, may, when considering the application, condone such defect or failure if that Committee, Committee Chairperson or magistrate is of the opinion that there has been substantial compliance with this Act and that the condonation of such defect or failure does not, or is not likely to, prejudice any person.

Regulations

79. (1) The Minister may make regulations relating to -

- (a) the hours during which different licensed premises may be open for business, or liquor may be sold or consumed on such premises;

- (b) the form and manner in which, and the period of time in or during which any application, objection, submission, representation, notification or appeal in terms of this Act may be made or lodged, and the number of copies to be so lodged;
- (c) the lodging of a reply to an objection or representation made in terms of this Act;
- (d) the form of any notice or advertisement to be published in the *Gazette* or in any newspaper in terms of this Act, including the number of publications of such notice or advertisement;
- (e) the records or other documents to be kept or maintained in terms of any provision of this Act, and the form, retention, safe-keeping or destruction of such records or documents;
- (f) the terms and conditions of, and eligibility to, office of members of Committees, and the allowances payable to such members;
- (g) the procedures at, and the dates or frequency of meetings of, Committees in terms of section 26;
- (h) any additional procedures or requirements for public notification of meetings, applications and other proceedings or functions of Committees;
- (i) the maximum or minimum number of days' notice to be given in respect of any meeting, or in respect of the lodging of any application, objection or submission;
- (j) the form of any notice which shall or may be given in terms of or under this Act, and the manner of service of such notice;
- (k) the form of and manner of display of notices required by this Act to be displayed, including the place or places and period of time of such displays;
- (l) the manner, times and places of payment of fees payable under this Act;
- (m) the definition of "meals", "refreshments", "snack foods" and the manner of serving such meals, refreshments, snack foods or non-alcoholic drinks on licensed premises;
- (n) the powers, duties and functions of inspectors of premises under section 67; and
- (o) generally, all other matters which are by this Act required or

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permitted to be prescribed, or which the Minister considers necessary or expedient to prescribe or regulate in order to attain or further the objects of this Act.

(2) A regulation made under this section may, except as otherwise provided in this Act, prescribe a fine not exceeding N\$4 000 or a period of imprisonment not exceeding one year or both such fine and such imprisonment as a penalty for the contravention of, or failure to comply with, such regulation.

Amendment of section 1 of Act 74 of 1962, as amended by section 1 of Act 10 of 1991

80. Section 1 of the Aviation Act, 1962, is amended by the substitution for the definition of "intoxicating liquor" of the following definition:

" 'intoxicating liquor' means [**intoxicating**] liquor as defined in section 1 of the [**Liquor Ordinance, 1969 (Ordinance 2 of 1969)**] Liquor Act, 1998;"

Amendment of section 6 bis of Act 74 of 1962, as amended by section 6 of Act 10 of 1991

81. Section 6 bis of the Aviation Act, 1962, is amended -

(a) by the addition to paragraph (b) of subsection (1) of the following proviso:

"Provided that such permission to sell intoxicating liquor shall not be granted to any person who, or whose manager, is a disqualified person in terms of section 19 of the Liquor Act, 1998, or who is a producer or manufacturer of liquor, or the agent or nominee of, or has directly or indirectly a financial interest in, such a producer or manufacturer."

(b) by the insertion after subsection (1) of the following subsection:

"(1A) If any permission referred to in paragraph (b) of subsection (1) was granted to any person referred to in the proviso to that paragraph, or if a person to whom such permission was granted under that paragraph subsequent to such granting becomes a disqualified person, the Minister shall by notice in writing to such person withdraw such permission as from a date determined by the Minister and specified in such notice."; and

(c) by the substitution for subsection (4) of the following subsection:

"(4) Notwithstanding the provisions of [section 78(2)(c) of the Liquor Ordinance, 1969 (Ordinance 2 of 1969)] the Liquor Act, 1998, the Minister may in respect of any portion or portions of any premises referred to in subsection (3) of this section, designated by him or her as a transit area or transit areas, as the case may be, fix days and

hours of sale and delivery of intoxicating liquor and any days or hours so fixed shall be deemed to be the days on which or the hours during which liquor may in terms of the said [section 78(2)(c)] Act, be sold or delivered in such area or areas.”.

Substitution of section 1 of Proclamation 3 of 1924, as amended by section 2 of Ordinance 14 of 1937, section 1 of Ordinance 1 of 1938 and section 28 of Ordinance 47 of 1952

82. The following section is substituted for section 1 of the Brewers and Distillers Licence Duty Proclamation, 1924 :

“1. (1) Every brewer of beer shall take out a licence, which shall be obtainable from the Permanent Secretary : Trade and Industry, and shall be valid until 31 December of the year during which such licence was so taken out, subject thereto that such licence may upon application in the prescribed form and manner -

- (a) be renewed by that Permanent Secretary on or before 31 December of any year, for a period of one year commencing on the day following the day upon which such licence would have expired; or
- (b) be transferred to another brewer of beer during the currency of such licence.

(2) The licence fees payable in respect of a licence referred to in subsection (1) shall be calculated as follows -

- (a) an amount of N\$16 for each month in respect of which such licence is valid during the first year of its currency ending on 31 December of such year;
- (b) an amount of N\$100 for every period of one year for which such licence is renewed in terms of subsection (1), following the first period of its currency referred to in paragraph (a); and
- (c) on the transfer of such licence, in addition to any amount payable in terms of this subsection, an amount of N\$6 for each month in respect of which such licence is valid from the date of such transfer until 31 December of the year during which such licence was so transferred.

(3) Every distiller of wine brandy and every distiller of spirits other than wine brandy shall take out a licence which may be obtained from the Permanent Secretary : Trade and Industry, which licence shall be valid until 31 December of the year during which it was so taken out, but which licence may upon application in the prescribed form and manner -

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- (a) be renewed by that Permanent Secretary on or before the date of expiry of such licence, for a period of one year commencing on the day following the day upon which such licence would have so expired; or
- (b) be transferred to another distiller of wine brandy or a distiller of spirits other than wine brandy.
- (4) The licence fees payable in respect of a licence referred to in subsection (3) shall be calculated as follows -
 - (a) an amount of N\$16 for each month in respect of which such licence is valid during the first year of its currency ending on 31 December of such year;
 - (b) an amount of N\$100 for every period of one year such licence is renewed in terms of subsection (1), following the first period of its currency referred to in paragraph (a); and
 - (c) on the transfer of such licence, in addition to any amount payable in terms of this subsection, an amount of N\$6 for each month in respect of which such licence is valid from the date of such transfer until 31 December of the year during which such licence was so transferred.
- (5) For the purposes of this section a portion of a month shall be deemed to be a month.

Amendment of section 2 of Proclamation 3 of 1924, as amended by section 3 of Ordinance 14 of 1937

83. Section 2 of the Brewers and Distillers Licences Duty Proclamation, 1924, is amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) A court which convicts an accused of an offence in terms of subsection (1) shall, without notice to any person, but subject to section 35 of the Criminal Procedure Act, 1977 (Act 51 of 1977), declare any equipment used to commit an offence under that subsection and which was seized under the provisions of that Act, forfeited to the State.”

Substitution of section 3 of Proclamation 3 of 1924, as substituted by section 3 of Ordinance 9 of 1935

84. The following subsection is substituted for section 3 of the Brewers and Distillers Licences Duty Proclamation, 1924:

“(3) The authorized revenue official for any magisterial district,

or his or her deputy, may demand from the holder of any brewer's licence or distiller's licence under the provisions of this Proclamation who is carrying on business as a brewer or distiller in the aforesaid district, a return of sales made by [him] such licence holder [at] during any period to any holder of a **[retail or club-licence under the provisions of the Liquor Licensing Proclamation, 1920 aforesaid] licence under the Liquor Act, 1998**, and every such holder of a brewer's or distiller's licence who fails forthwith to comply with any such demand shall be guilty of an offence and liable on conviction to a fine not exceeding **[twenty pounds] N\$1 000** or in default of payment to imprisonment for any period not exceeding three months or to both such fine and such imprisonment."

Substitution of section 3 bis of Proclamation 3 of 1924, inserted by section 4 of Ordinance 14 of 1937

85. The following section is substituted for section 3 bis of the Brewers and Distillers Licences Duty Proclamation, 1924:

"3 bis. The **[Administrator] Minister of Trade and Industry** may make, alter and revoke regulations, not being contrary to the provisions of this Proclamation, prescribing the forms of licences, notices, applications and other documents to be used, providing for returns to be made of the quantity of liquor sold, and generally for carrying out more efficiently the administration of this Proclamation, and may furthermore impose penalties for the breach of any regulation."

Repeal of laws, savings and transitional provisions

86. (1) Subject to subsection (2) and to the transitional provisions contained in the Third Schedule, the laws set out in the Second Schedule are hereby repealed.

(2) Subject to the further provisions of this Act, anything done or deemed to have been done under or in terms of a provision of any law repealed by subsection (1), and which is capable of being done under or in terms of a provision of this Act, shall be deemed to have been done under or in terms of the last-mentioned provision.

Short title and commencement

87. (1) This Act shall be called the Liquor Act, 1998, and shall, subject to subsection (2), come into operation on a date to be determined by the Minister, in consultation with the Minister of Justice, by notice in the *Gazette*.

(2) Different dates may be determined in terms of subsection (1) in respect of different sections of this Act.

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LIQUOR ACT, 1998**FIRST SCHEDULE****FEES****PART I: LICENCES**

Fees payable upon application for, issue of or renewal of licences.

Kind of Licence	Section of Act	Application Fees	Licence Fees and Annual Licence Fees
		N\$	N\$
1. Hotel liquor licence: caravan park, safari undertaking :	3	100	600
2. Hotel liquor licence (excluding those mentioned in paragraph 1):	3		
(a) less than 25 rooms:		100	600
(b) more than 24 rooms:		200	1 200
3. Restaurant liquor licence:			
(a) without public bar:	4(2)	100	600
(b) with public bar:	4(3)	200	1 200
4. Authority for public bar:			
(a) at restaurant (separate application):	4(3)	100	600
(b) at rest camp or guest farm:	4(3)(a)	100	600
5. Shebeen licence:	5	60	400
6. Club liquor licence:	6	200	1 200
7. Special liquor licence:	7		

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(a) all liquor:		200	1 200
(b) light liquor:		100	600
8. Temporary liquor licence:	8		
(a) all liquor:		20	40 per day
(b) light liquor only:		20	20 per day
9. Bottle store licence:	9	200	2 000
10. Grocery liquor licence:	10	200	2 000
11. Wholesale liquor licence:	11	200	3 000
12. Brewery depot licence:	12	200	2 000
13. Distillery (sales) licence:	13	100	600
14. Vineyard (sales) licence:	14	50	300
15. Parks liquor licence:	15		
(a) on-consumption:			
(i) without public bar;		100	600
(ii) with public bar:		200	1 200
(b) off-sales		100	600

If a licence is granted after 30 April in any year, there shall be payable in respect of such granting a fee of one twelfth of the amount shown in the last column of this Part for each month or part of a month from the date of the granting up to 31 March following the date of granting of the licence.

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LIQUOR ACT, 1998**PART II: OTHER MATTERS**

Kind of Application	Section of Act	Application Fees	Licence Fees
1. Conditional authority:	30	50	20
2. Extension of conditional authority:	30	20	20
3. Removal of licence:	31	50	100
4. Amendment of conditions:	27 (1) (d)	50	100
5. Transfer of licence:	33	50	100
6. Controlling interest:	34	25	25
7. Change of name:	35	20	20
8. Short term leasing:	36	50	100
9. Re-transfer:	36 (6)	Nil	100
10. Any other application not provided for:		50	100

PART III: APPEALS

Lodging notice of appeal	Section 41	N\$50
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SECOND SCHEDULE
LAWS REPEALED
(Section 86)

No. and year of law	Short title	Extent of repeal
Ordinance 36 of 1957	Kaffir Beer (Rural Areas) Control Ordinance, 1957	The whole
Act 70 of 1957	Railways and Harbours Control and Management Consolidation Act, 1957	Chapter V
Act 102 of 1967	General Law Amendment Act, 1967	Section 22
Proclamation R231 of 1967	Supply and Sale of Liquor Proclamation, 1967	The whole
Proclamation R205 of 1968	Supply and sale of liquor to Natives in South West Africa and the brewing, selling and supplying of Kaffir Beer in South West Africa Proclamation, 1968	The whole
Ordinance 2 of 1969	Liquor Ordinance, 1969	The whole
Ordinance 18 of 1969	Liquor Amendment Ordinance, 1969	The whole
Ordinance 9 of 1970	Liquor Amendment Ordinance, The whole 1970	The whole
Ordinance 20 of 1971	Liquor Amendment Ordinance, The whole 1971	The whole

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Ordinance 9 of 1972	Liquor Amendment Ordinance, 1972	The whole
Proclamation R198 of 1972	Supply and Sale of Liquor Amendment Proclamation, 1972	The whole
Proclamation R240 of 1973	Supply and Sale of Liquor Amendment Proclamation, 1973	The whole
Enactment 2 of 1973 (Government Notice R1024 of 1973)	Ovambo Trading and Licensing Amendment Enactment, 1973	The whole
Ordinance 26 of 1973	Liquor Amendment Ordinance, 1973	The whole
Ordinance 12 of 1974	Liquor Amendment Ordinance, 1974	The whole
Proclamation R219 of 1974	Supply and sale of liquor to Natives in South West Africa and the brewing, selling and supplying of Kaffir beer in South West Africa amendment Proclamation, 1974	The whole
Ordinance 9 of 1975	Liquor Amendment Ordinance, 1975	The whole
Ordinance 22 of 1975	Liquor Amendment Ordinance, 1975	The whole
Ordinance 9 of 1976	Liquor Amendment Ordinance, 1976	The whole
Proclamation A.G. 73 of 1978	Liquor Laws Amendment Proclamation, 1978	The whole
Proclamation R21 of 1984	Arrangement appertaining to the sale and supply of Liquor in Walvis Bay, 1984	The whole
Act 21 of 1987	National Transport Corporation Act, 1987	Section 5

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Act 15 of 1988	Liquor Affairs Amendment Act, 1988	The whole
Act 26 of 1991	Racial Discrimination Prohibition Amendment Act, 1991	Section 20

**THIRD SCHEDULE
TRANSITIONAL PROVISIONS
(Section 86)**

Notwithstanding the repeal of the laws set out in the Second Schedule to this Act, the following provisions shall apply to the respective classes of licences and permits specified in this Schedule.

PART I

Accommodation Establishment On-Consumption Licences and Accommodation Establishment Restaurant Liquor Licences held under the repealed Liquor Ordinance, 1969 (Ordinance 2 of 1969):

1. Each licence referred to in this Part shall remain in force until the date upon which such licence would have terminated under the repealed Liquor Ordinance, 1969, if that Ordinance had not been repealed, or such earlier date as the licensee may apply for and be granted a hotel liquor licence under section 3 of this Act.
2. No application fee in terms of section 22 of this Act shall be payable in respect of an application in terms of clause 1, but the provisions of sections 21 and 22 of this Act as to the payment of licence fees and annual licence fees, and as to the termination and surrender of licences, shall apply.

PART II

- A. The licences or permits specified in column 1 hereunder which were in force on the date of commencement of this Act shall, from that date, respectively become the licences under this Act specified in column 2 below directly opposite such licences or permits so specified in such column 1, on and subject to the conditions applicable to each such licence under this Act:

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Column 1	Column 2
1. Restaurant liquor licence under section 6(b)(i) of the Liquor Ordinance, 1969 (Ordinance 2 of 1969).	1. Restaurant liquor licence under section 4(2) of this Act.
2. Club liquor licence under section 6(b)(ii) of the Liquor Ordinance, 1969.	2. Club liquor licence under section 6 of this Act.
3. Bottle liquor licence under section 6(a)(iii) of the Liquor Ordinance, 1969.	3. Bottle store licence under section 9 of this Act.
4. Accommodation Establishment off-sales licence under section 6(a)(iv) of the Liquor Ordinance, 1969.	4. Bottle store licence under section 9 of this Act.
5. Wholesale liquor licence under section 6(a)(i) of the Liquor Ordinance, 1969.	5. Wholesale liquor licence under section 11 of this Act.
6. Special brewers wholesale depot licence under section 6(a)(ii) of the Liquor Ordinance, 1969.	6. Brewery depot licence under section 12 of this Act.
7. Written authority under the Supply and sale of liquor to Natives in South West Africa and the brewing, selling and supplying of Kaffir Beer in South West Africa Proclamation, 1968 (Proclamation 205 of 1968) (in this Schedule referred to as "Proclamation 205 of 1968") to sell liquor to all persons or to the public for consumption away from the premises.	7. Bottle store licence under section 9 of this Act.
8. Written authority under Proclamation 205 of 1968, to sell liquor to lawful dealers only.	8. Wholesale liquor licence under section 11 of this Act.
9. Written authority under Proclamation 205 of 1968, to sell liquor for consumption in a restaurant.	9. Restaurant liquor licence under section 4(2) of this Act.
10. Special brewers wholesale licence under section 1(a)(ii) of the Brewers and Distillers Licences Duty	10. Brewery depot licence under section 12 of this Act.

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Proclamation, 1924 (Proclamation 3 of 1924)

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| <p>11. Malt licence under the Ovambo Trading and Licensing Enactment, 1972 (Enactment 3 of 1972).</p> <p>12. Wine and malt licence under the Ovambo Trading and Licensing En-actment, 1972.</p> <p>13. Intoxicating liquor licence under the Ovambo Trading and Licen-sing Enactment, 1972.</p> <p>14. Special licence under section 6(b) (iv) of the Liquor Ordinance, 1969, relating to a restaurant licensed under section 6(b)(i) of that Ordinance.</p> <p>15. Special licence under section 6(b)(iv) of the Liquor Ordinance, 1969, relating to a distillery licensed under a section 1(b) of the Brewers and Distillers Licence Duty Proclamation, 1924.</p> | <p>11. Grocery liquor licence under section 10 of this Act</p> <p>12. Tavern Licence under section 5 of this Act (subject to the licensee's right of election under item 3 of Part III).</p> <p>13. Bottle store licence under section 9 of this Act (subject to the licensee's right of election under item 4 of Part III).</p> <p>14. Public bar authority for a restau-rant under section 4(3) of this Act.</p> <p>15. Distillery licence under section 13 of this Act.</p> |
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- B.**
1. In the case of a licence referred to in item 12 or 13 of paragraph A, the licensee shall be allowed a period of three months from the date of commencement of this Act within which to comply with sections 44 and 45, or any other conditions necessitating alterations to the licensed premises.
 2. The provisions of section 21 and 22 relating to the payment of licence fees and annual licence fees, and relating to the termination of licences in the event of non-payment of annual licence fees or as to the surren-der of a licence shall, as from the date of commencement of this Act, apply to each licence referred to in this Part.

PART III

1. The holder of a licence, authority or permit referred to in paragraph 2 of this Part may, within a period of 3 months from the date of commencement of this Act and without the payment of any application fees or additional licence fees, in the prescribed form and manner apply to the Regional Liquor Licen-sing Committee for the region wherein the premises subject to such licence, authority or permit shall, on the making of the declaration, become

the corresponding licence under this Act (herein called the new licence).

2. Licences and permits covered by this Part:

- (1) Written authorities under the Supply and sale and liquor to Natives in South West Africa and the brewing, selling and supplying of Kaffir Beer in South West Africa Proclamation, 1968 (Proclamation 205 of 1968) other than those specified in items 7, 8 and 9 of paragraph A of Part II of this Schedule.
 - (2) Special licences under section 6(b)(iv) of the Liquor Ordinance, 1969, other than those specified in items 14 and 15 of paragraph A of Part II of this Schedule.
 - (3) Wine and malt licences under the Ovambo Trading and Licensing En-actment, 1972 (Enactment 3 of the 1972), where the holder of such a licence elects not to convert to a shebeen licence under item 12 of paragraph A of Part II of this Schedule, but to seek a different equivalency, whether off-sales or on-consumption, under this Part.
 - (4) Intoxicating liquor licences under the Ovambo Trading and licensing Enactment, 1972, referred to in subparagraph (3), where the holder of such a licence elects not to convert to a bottle store licence under item 13 of paragraph A of Part II of this Schedule, but to seek a different equivalency, whether off-sales or on-consumption, under this Part.
 - (5) The right to sell intoxicating liquor under section 5 of the National Transport Corporation Act, 1987 (Act 21 of 1987) in respect of each or any premises on which liquor is sold.
 - (6) A permit to sell liquor produced from the produce of the holder's land under paragraph (h) of section 4 of the Liquor Ordinance, 1969.
 - (7) Any licence, authority or permit referred to in the first column of paragraph A of Part II of this Schedule, where the holder of such licence, authority or permit desires to classify or reclassify the equivalency of such licence, authority or permit and the Committee considers the re-classification justified.
3. Subject to Part V of this Schedule, and in the case of a new shebeen licence under section 5 of this Act, subject to the Fourth Schedule, a declaration under paragraph 1 may specify any conditions which, in the opinion of the Committee, are necessary or desirable in order to conform to this Act as applicable to the new licence.
4. The absence of any condition in the declaration referred to in paragraph 3 shall not relieve the licensee from compliance with this Act.
5. The licensee shall be allowed a period of 3 months from the date of the making of the declaration referred to in paragraph 3 in which to comply with

sections 44 and 45 of this Act and , if applicable, to the Fourth Schedule or any other conditions, including any condition in such declaration, relating to alterations to the premises, unless such declaration otherwise stipulates.

6. Each Regional Liquor Licensing Committee shall not earlier than three months prior to, and not later than five months after, the date of commencement of this Act, hold a classification meeting at which the Committee shall consider, and decide on, applications made in terms of this Part for declarations of equivalency, and sections 27, 28 and 29 shall *mutatis mutandis* apply to such meeting.
7. No fee shall be payable on applications for , or the making of a declaration of equivalency under paragraph 1, but as from the date of the making of such declaration, the provisions of this Act as to the payment of annual licence fees and as to the termination or the surrender of licences, shall apply to the new licences so declared.
8. No declaration of equivalency under paragraph 1 shall be made subject to conditions to which the applicant does not consent, but the Committee -
 - (a) may refuse to impose conditions which the Committee considers unjustified; and
 - (b) shall refuse to make a declaration if the Committee is of the opinion that the applicant is or will be unable to comply with the conditions applicable to the licence.

PART IV

An application for or in respect of a liquor licence made in terms of any provision of the repealed Liquor Ordinance, 1969, which was made before, and is still pending at, the date of commencement of this Act, shall be deemed an application for or in respect of a corresponding liquor licence in terms of this Act.

PART V

The secretary of a Regional Licensing Committee shall enter into the register kept by him or her in terms of section 39 of this Act, particulars of each licence converted under Part II or Part III of this Schedule.

FOURTH SCHEDULE

REQUIREMENTS FOR SHEBEENS

1. The location, usage and operation of a proposed shebeen shall conform to the planning regulations applicable to the area concerned, made under the Town Planning Ordinance, 1954 (Ordinance 18 of 1954) and shall further conform to the conditions laid down by the Regional Licensing Committee.
2. The building, structures and premises comprising the premises of a shebeen, or to comprise the premises of a proposed shebeen, shall be subject to the approval of -

- (a) in the case of premises situated in a municipality, the chief health officer of that municipality; or
 - (b) in the case of premises outside of any municipality, the district health officer concerned.
3. The following basic requirements in respect of the premises concerned shall, to the satisfaction of the health officer concerned referred to in paragraph 2(a) or (b), as the case may be, be complied with before that health officer shall approve of the premises:
 - (a) The premises referred to in paragraph 2 shall not form part of, or be used as, a dwelling, or if attached to any dwelling, shall be separated from such dwelling by means of walls and securable doors.
 - (b) Access to the toilet and other sanitary facilities of the premises shall be separate from, and not be obtained through, a dwelling.
 - (c) There shall be separate toilet facilities on the premises for male and female persons.
 - (d) A sink or hand wash basin with running water which may be used by the customers for the purpose of washing their hands, or in the event of no running water, a suitable receptacle for the storage of clean water with a tight-fitting lid shall be provided.
 - (e) The floor of the premises shall be constructed of material with a smooth finish capable of being properly cleansed.
 - (f) Serving counters and seating accommodation for customers appropriate to the premises and to the maximum number of customers which may be served at any time shall be provided.
 - (g) In the event of the premises having a kitchen, the kitchen shall be separate from the drinking areas or dining areas.
 - (h) There shall be adequate washing-up facilities on the premises.
 - (i) The drinking area, kitchen, dining or storeroom on the premises shall not be used as a living-room or as a sleeping place for any person.
 - (j) There shall be sufficient suitable refuse receptacles on the premises.
4. A health officer, upon approving premises under paragraph 2 or 3 of this Schedule, shall issue a certificate of fitness in respect of such premises in such form as the magistrate approves.
5. In the case of premises yet to be constructed or completed, in addition to the procedures and requirements for submitting and approving plans and specifications, the provisions of section 30 of this Act relating to conditional authority for proposed or incomplete premises shall apply to such premises.