

MPUMALANGA LIQUOR LICENCING BILL, 2006

PROVINCE OF MPUMALANGA

(For introduction in the Provincial Legislature)

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To provide for the regulation of the liquor industry in the Province; and for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of the Province of Mpumalanga, as follows:

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

“Authority” means the Mpumalanga Liquor Authority established in terms of section 4;

“beer” means –

- (a) a drink manufactured by the fermentation of a mash of malt, with or without cereals and flavoured with hops;
- (b) ale, cider or stout; or
- (c) any substance or other fermented drink –
 - (i) manufactured as or sold under the name of beer, ale, cider or stout; or
 - (ii) declared to be beer in terms of section 42(2)(a)(i) of the National Act,

if it contains more than one per cent by volume of alcohol, but does not include traditional African beer;

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“controlling interest”, in relation to any business or undertaking, means any interest of whatever nature enabling the holder thereof to exercise, directly or indirectly, any control whatsoever over the activities of the business or undertaking;

“co-operative” means a co-operative as defined in the Co-operatives Act, 1981 (Act No. 91 of 1981);

“Court” means any institution vested with judicial authority of the Republic of South Africa as contemplated in section 166 of the Constitution;

“Department” means the Department responsible for the administration of liquor matters in the Province;

“Executive Council” means the Executive Council of the Province established in terms of section 132 of the Constitution;

“financial year” means –

- (a) the period from the date on which this Act takes effect to the last day of March in the following year; and
- (b) each period of twelve months thereafter, ending on the last day of March of each year;

“inspector” means any person designated as such in terms of section 52 or 53 of this Act;

“licence” means a liquor licence referred to in section 33;

“licenced person” means a person approved to be issued a licence;

“licenced premises” means the premises on which liquor may be sold under a licence;

“liquor” means –

- (a) any liquor product as defined in section 1 of the Liquor Products Act, 1989;
- (b) any beer or traditional African beer; or
- (c) any other substance or drink declared to be liquor in terms of section 42(2)(a)(i) of the National Act;

“Member of the Executive Council” means the Member of the Executive Council responsible for the administration of liquor matters in the Province;

“methylated spirits” means –

- (a) spirits denatured in accordance with any law on the denaturation or methylation of spirits;
- (b) any other denatured, medicated, perfumed or otherwise treated spirits declared to be methylated spirits in terms of section 42(2)(a)(ii) of the National Act,

and shall, for purposes of section 6, and with due regard to the provisions of section 49, be deemed to be liquor;

“micro-manufacturer” means a person licenced as such in terms of this Act to manufacture liquor at or below the prescribed threshold volume as determined by the Minister responsible for liquor affairs in terms of the National Act;

“Minister” means a Minister within the National Sphere of Government;

“municipality” means any local government structure contemplated in section 155 of the Constitution or any other applicable law;

“National Act” means the Liquor Act, 2003 (Act No. 59 of 2003);

“Premier” means the Premier of the Province as contemplated in section 125(1) of the Constitution;

“premises” includes any place, land, building, conveyance, or any part thereof;

“prescribe” means prescribed by regulation and **“prescribed”** has a corresponding meaning;

“Province” means the Province of Mpumalanga as contemplated in section 103(1)(f) of the Constitution;

“Provincial Legislature” means the Provincial Legislature of the Province as referred to in section 104 of the Constitution;

“regulation” means any regulation made under this Act;

“sell” includes exchange or keep, offer, display, deliver, supply, give, provide or dispose of for sale, or authorise, direct or allow a sale, and **“sale”** and **“seller”** have corresponding meanings;

“special liquor licence” means a licence issued in terms of either section 33(1)(d) or section 33(1)(e);

“traditional African beer” means a fermented liquid –

(a) made by –

- (i) the fermentation of malt, unmalted grain or meal of the cereals sorghum, maize, finger millet or pearl millet, with no more than five per cent sugar by weight relative to the combined weight of all the malt, grain or cereal ingredients; or
- (ii) combining traditional African beer powder with water;

(b) with no addition of ethyl alcohol;

(c) with an alcohol content not exceeding 3,5 per cent by volume;

(d) in a state of fermentation, or of which the fermentation has not been arrested;

(e) not containing or flavoured with hops or any product derived from hops; and

(f) any other substance or fermented drink declared to be African beer in terms of section 42(2)(a)(i) of the National Act;

“traditional African beer powder” means a dry product –

(a) comprising –

- (i) not more than three parts by mass of milled sorghum or maize malt; and
- (ii) not less than seven parts by mass of milled precooked maize or sorghum unmalted grain or meal; and

(b) which –

- (i) does not contain any sugar derived from any source;
- (ii) does not contain, and is not flavoured with, hops or products derived from hops; and
- (iii) may contain active dry yeast added as a processing aid;

“supply” with regard to any liquor, means to place a person in possession or control of the liquor and **“supply”** as a noun and **“supplier”** have corresponding meanings;

“this Act” includes any regulation made under this Act.

(2) Where in this Act any functionary is required to take a decision in consultation with another functionary, such decision shall require the concurrence of such other functionary.

2. Application of Act. This Act shall not apply to –

- (a) an officer as defined in section 1(1) of the Customs and Excise Act, 1964 (Act No. 91 of 1964), in the performance of his or her functions as such;
- (b) an administrator of a deceased or insolvent estate, in the administration of that estate;
- (c) a sheriff or any other officer acting in terms of an order of a Court, Judge or Magistrate, in the performance of his or her functions as such;
- (d) the commander of an aircraft of an air service licenced in terms of the Air Services Licencing Act, 1990 (Act No. 115 of 1990), to provide a scheduled air transport service, with regard to

the sale of liquor to a passenger on authority on that aircraft while on a flight of not less than 100 kilometres from one airport in the Republic of South Africa to another airport;

- (e) a person, with regard to the sale of any spiritous or distilled perfumery or medicated spirits, which perfumery or spirit is not methylated spirits;
- (f) the manufacturer of sweets containing not more than two per cent by mass of alcohol, with regard to the sale of those sweets to a licenced person.

3. Functions of Member of the Executive Council. The Member of the Executive Council shall –

- (a) advise the Premier, or furnish a report or recommendation to the Premier, on any matter referred to him or her by the Premier for consideration and arising from the application of this Act;
- (b) advise the Premier on matters of policy, norms and standards concerning any aspect of the liquor industry and the Member of the Executive Council may request the assistance of the Authority to assist him or her in this regard;
- (c) annually provide the National Minister responsible for liquor matters, and the Executive Council, with the information contained in the Provincial Liquor Register as contemplated in section 6(1)(d);
- (d) Perform such other functions as contemplated in terms of this Act.

4. Establishment. There is hereby established a juristic person to be known as the Mpumalanga Liquor Authority.

5. Objects of the Act. (1) The objects of this Act shall be to provide for the regulation of micro-manufacturing and sale of liquor in the Province, the facilitation of the entry of new participants into the liquor industry and ensuring that all participants in the liquor industry fully comply with all applicable legal prescripts pertaining to the liquor industry in the Province and to address and reduce the economic and social costs of excessive alcohol consumption.

(2) In achieving its objects, the Authority shall endeavour to progressively increase its own revenue generation and collection.

6. Powers and functions of the Authority. (1) In the exercise of its powers and the performance of its functions, the Authority shall –

- (a) licence applicants in terms of this Act;
- (b) facilitate the entry of new participants into the liquor industry;
- (c) ensure that all participants in the liquor industry fully comply with all applicable legal prescripts pertaining to the liquor industry;
- (d) establish and maintain a Provincial Liquor Register of all persons and entities licenced in terms of this Act, a description of the category of licence in each instance, the validity period of such licence and a description of the licenced premises concerned in each instance;
- (e) advise the Member of the Executive Council or furnish reports or recommendations to the Member of the Executive Council on any matter referred to the Authority by the Member of the Executive Council for consideration;
- (f) advise the Member of the Executive Council or furnish reports or recommendations to the Member of the Executive Council on any matter in respect of the administration of this Act and

which requires the attention of the Member of the Executive Council with specific emphasis on the facilitation of the entry of new participants into the liquor industry, including incentive schemes in this regard, as well as ensuring that all participants in the liquor industry fully comply with all applicable legal prescripts pertaining to the liquor industry;

- (g) implement incentive schemes approved and prescribed by the Member of the Executive Council; and
- (h) advise the Member of the Executive Council on the social impact of alcohol abuse.

(2) The Authority shall exercise and perform its powers and functions with due regard to section 104, read with section 125 of the Constitution, section 230 of the Constitution, the Borrowing Powers of Provincial Governments Act, 1996 (Act No. 48 of 1996), the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the provisions of all National Legislation and all National policies, guidelines and directives pertaining to the liquor industry, with specific reference to policies, guidelines and directives pertaining to the transformation of the liquor industry.

(3) The Authority shall exercise and perform its powers and functions, as far as financial and personnel matters are concerned, by –

- (a) developing and implementing, within six months after the coming into operation of this Act, comprehensive policies and programmes regarding all financial and all personnel matters, and subsequently amending such policies and programmes, as and when necessary: Provided that no personnel establishment of the Authority shall be implemented without the prior written approval of the Member of the Executive Council first having been obtained;
- (b) ensuring that the Authority adheres to sound financial management, effective and equitable human resource development and efficient office administration in a responsible, accountable and transparent manner; and
- (c) disciplining, suspending and dismissing officers and employees of the Authority, with due regard to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995).

(4) The Authority shall, when acquiring, hiring, leasing, selling, letting, burdening or alienating any goods, supplies or services, duly comply with the provisions of section 25: Provided that the acquisition or disposal of immovable property shall require the prior written approval of the Member of the Executive Council.

(5) The Authority shall, in the exercise and performance of its powers and functions, liaise and consult with all relevant stakeholders, including but not necessarily limited to -

- (a) individuals and communities;
- (b) traditional leaders;
- (c) organs of state as contemplated in section 239 of the Constitution;
- (d) statutory bodies; and
- (e) organized business:

Provided that the Authority shall involve the Department in complying with its obligation to liaise and consult with all relevant stakeholders.

(6) In performing its powers and functions, the Authority may enter into agreements, and in consultation with the Member of the Executive Council, enter into public private partnerships.

(7) In furthering its objects, the Authority may raise funds in accordance with detailed written funding proposals: Provided that each such funding proposal shall, prior to the raising of funds in accordance therewith, be approved in writing by the Member of the Executive Council.

7. Establishment and composition of Board. (1) The affairs of the Authority shall be managed and controlled by a Board to be known as the Mpumalanga Liquor Authority Board and which Board shall be the accounting authority for the Authority as contemplated in section 49(2)(a) of the Public Finance Management Act, 1999, and which Board shall exercise and perform the powers and functions conferred or imposed upon the Authority by this Act or any other law.

(2) The Board shall, in respect of the exercise and performance of its powers and functions, including the corporate governance of the Authority, be accountable to the Member of the Executive Council.

(3) The Board shall consist of not fewer than five and not more than seven Members eligible to vote at Board meetings.

(4) The Head of the Department or any other official of the Department so designated by the Head of Department, shall be a Member of the Board, *ex officio*, without voting powers.

8. Qualifications for Membership of Board. The Members shall be –

- (a) fit and proper persons;
- (b) South African citizens;
- (c) broadly representative of the population of the Province; and
- (d) persons who have sufficient knowledge of, or experience in the liquor industry, with specific emphasis on Black Economic Empowerment within the liquor industry.

9. Procedure for appointment. (1) The Member of the Executive Council, in consultation with the Executive Council shall, subject to the provisions of subsection (2) and the provisions of section 8, determine and appoint the Members of the Board.

(2) The Member of the Executive Council shall invite, through public invitation, applications for appointment as Member of the Board, within 21 days of the publication of the said advertisement.

(3) The Member of the Executive Council may, in the event of a vacancy on the Board, and with due regard to section 8, appoint a temporary Member of the Board until such vacancy has been duly filled as contemplated in subsection (2): Provided that the term of office of any such temporary Member may not exceed a period of three months in respect of any specific vacancy on the Board.

(4) The Member of the Executive Council may, in the event of all the positions on the Board being vacant, and with due regard to section 8, appoint persons as temporary Members to constitute an interim Board until such vacancies have been duly filled as contemplated in subsection (2): Provided that the term of office of such interim Board may not exceed a period of six months.

10. Disqualification of Member. Notwithstanding the provisions of section 7, 8 or 9, a person is disqualified from being appointed or remaining a Member of the Board if such person -

- (a) is or becomes a Member of the National Assembly or National Council of Provinces, any provincial legislature, municipality or is in the full-time employ of an organ of State, other than the Authority;
- (b) is or becomes subject to a final order of court whereby his or her estate is sequestrated under the Insolvency Act, 1936 (Act No. 24 of 1936), or if his or her estate is sequestrated in terms

of the laws of any other country or territory by a competent court or agency of such country or territory, or if he or she has assigned his or her estate for the benefit of his or her creditors;

- (c) is or becomes subject to an order of a competent court declaring him or her to be of unsound mind or mentally disordered or defective;
- (d) has been convicted of any offence under this Act, or of any other offence which does not involve dishonesty in respect of which he or she was sentenced to imprisonment without the option of a fine for a period of not less than three months, irrespective of whether such imprisonment was wholly or partly suspended or not, unless he or she has received a grant of amnesty or a free pardon, or unless the period of such imprisonment or suspension has expired at least ten years before the date of his or her appointment as Member; or
- (e) has been convicted of an offence involving dishonesty in respect of which he or she was sentenced to imprisonment without the option of a fine for a period of not less than three months, irrespective of whether such imprisonment was wholly or partly suspended or not, unless he or she has received a grant of amnesty or a free pardon, or unless the period of such imprisonment or suspension has expired at least ten years before the date of his or her appointment as Member.

11. Resignation and removal from office. (1) A Member may at any time resign from the Board upon one month's written notice tendered to the Member of the Executive Council who shall forthwith inform the Executive Council and the Board accordingly.

(2) Notwithstanding the provisions of section 14, but subject to the provisions of subsection (3) of this section, the appointment of any Member may, before the expiration of a Member's term of office, be terminated by the Member of the Executive Council, in consultation with the Executive Council -

- (a) on account of his or her improper conduct;
- (b) on account of unfitness for the functions of his or her office;
- (c) on the ground of a permanent infirmity of mind or body which renders him or her incapable of discharging the functions of his or her office or discharging them properly; or
- (d) that he or she is or has become disqualified in terms of section 10.

(3) Notwithstanding the provisions of section 7, 8 or 9 and subsection (2) of this section, a person's appointment as Member of the Board may be terminated by the Member of the Executive Council, in consultation with the Executive Council, if such person has been absent from two consecutive meetings of the Board without prior consent of the Board.

(4) The Member of the Executive Council may not terminate the appointment of a Member in terms of subsection (2) or (3) unless the Member of the Executive Council, after having afforded the relevant person an opportunity to state his or her case and having duly considered the matter, including any representations made, explanations given or evidence tendered by such person, is satisfied that the termination of his or her appointment is justified in the circumstances.

(5) For the purposes of subsection (2)(a) the non-compliance by a Member with any provision of this Act, *inter alia*, constitutes improper conduct.

12. Vacancies on Board. (1) The office of an appointed Member becomes vacant -

- (a) when he or she dies;
- (b) when his or her written resignation tendered to the Member of the Executive Council or the Board in terms of section 11(1) or 15(6), as the case may be, becomes effective;

- (c) when his or her appointment is terminated in terms of section 11 or 16; or
- (d) if he or she is absent from three consecutive meetings of the Board without the prior consent of the Chairperson, or, in the case of the Chairperson being absent from three consecutive meetings of the Board, without the prior consent of the Board.

(2) Subject to section 7(3), a vacancy on the Board shall be filled in accordance with sections 7, 8 and 9 by the appointment of another Member as soon as may be reasonably practicable after the occurrence of such vacancy, and any Member so appointed remains in office for the unexpired portion of his or her predecessor's term of office.

13. Chairperson and Deputy Chairperson. (1) The Member of the Executive Council shall –

- (a) in consultation with the Executive Council and subject to the provisions of section 10, appoint any Member eligible to vote at Board meetings, as non-executive Chairperson; and
- (b) subject to the provisions of section 10, appoint another Member as non-executive Deputy Chairperson of the Board.

(2) The Chairperson shall exercise and perform the powers and functions assigned to him or her by this Act.

(3) The Chairperson shall preside at all meetings of the Board.

(4) Whenever the Chairperson is absent, the powers, rights and functions of the Chairperson shall be exercised and performed by the Deputy Chairperson and in the absence of both the Chairperson and the Deputy Chairperson, by a Member designated for that purpose, from among its number, by the Board: Provided that if the office of Chairperson is vacant or the Chairperson refuses or fails to act, the Deputy Chairperson shall perform the powers, rights and functions of the Chairperson until a new Chairperson has been appointed as contemplated in subsection (1).

14. Terms and conditions of office of Member. (1) The term of office of a Member eligible to vote at Board meetings shall be for a period not exceeding four years.

(2) Upon the expiration of the term of office of an appointed Member as contemplated in subsection (1), he or she is eligible for re-appointment: Provided that no term of office of a Member may be extended or a Member be reappointed without fully complying with the procedure for appointment as contemplated in section 9: Provided further that the total period of such terms of office of a Member may not exceed eight years.

(3)(a) A Member holds office on such conditions as to the remuneration, allowances and benefits as the Member of the Executive Council, in consultation with the Member of the Executive Council responsible for financial matters, may from time to time, subject to paragraph (b), determine by prior Notice in the *Provincial Gazette*.

(b) Subsequent to the consultation as contemplated in paragraph (a), the Member of the Executive Council shall obtain Executive Council approval for the determination as contemplated in paragraph (a).

(4) The appointed Members are entitled to be reimbursed for any travelling and subsistence expenses reasonably incurred by them in connection with the performance of their functions as such Members and may for that purpose be paid such allowances as determined by the Member of the Executive Council as contemplated in subsection (3).

15. Chief Executive Officer. (1) The Chief Executive Officer, appointed in terms of subsection (3), shall be a person who -

- (a) has appropriate qualifications, knowledge or experience regarding the business and operations of the Authority;
- (b) is not subject to a final order of court whereby his or her estate is sequestrated under the Insolvency Act, 1936 (Act No. 24 of 1936), or if his or her estate is sequestrated in terms of the laws of any other country or territory by a competent court or agency of such country or territory, or if he or she has assigned his or her estate for the benefit of his or her creditors;
- (c) is not subject to an order of a competent court declaring him or her to be of unsound mind or mentally disordered or defective;
- (d) has not been convicted of any offence under this Act or of any other offence which does not involve dishonesty, in respect of which he or she was sentenced to imprisonment without the option of a fine for a period of not less than three months, irrespective of whether such imprisonment was wholly or partly suspended or not, unless he or she has received a grant of amnesty or a free pardon, or unless the period of such imprisonment or suspension has expired at least ten years before the date of his or her appointment as Chief Executive Officer; and
- (e) has not been convicted of an offence involving dishonesty in respect of which he or she was sentenced to imprisonment without the option of a fine for a period of not less than three months, irrespective of whether such imprisonment was wholly or partly suspended or not, unless he or she has received a grant of amnesty or a free pardon, or unless the period of such imprisonment or suspension has expired at least ten years before the date of his or her appointment as Chief Executive Officer.

(2) The Chief Executive Officer is the chief administration and accounting officer of the Authority, subject to the control of the Board.

(3) The Board shall, subject to the provisions of subsection (4) and the provisions of section 10, determine and appoint, in consultation with the Member of the Executive Council, the Chief Executive Officer of the Authority.

(4) The Board shall, after consultation with the Member of the Executive Council invite, through public invitation, applications for appointment as Chief Executive Officer of the Authority, within 21 days of the publication of the said advertisement.

(5) The Chief Executive Officer is appointed for such period and on such terms and conditions of service, as the Board may determine: Provided that -

- (a) the Chief Executive Officer may be so appointed for a period not exceeding five years;
- (b) upon the expiration of the term of office of the Chief Executive Officer, he or she is eligible for re-appointment: Provided that the total period of such terms of office of the Chief Executive Officer may not exceed ten years;
- (c) (i) the Chief Executive Officer holds office on such conditions as to the remuneration, allowances and benefits as the Member of the Executive Council, in consultation with the Member of the Executive Council responsible for financial matters, may from time to time, subject to subparagraph (ii), determine by prior Notice in the *Provincial Gazette*;
- (ii) subsequent to the consultation as contemplated in subparagraph (i), the Member of the Executive Council shall obtain Executive Council approval for the determination as contemplated in paragraph (i);
- (d) the Chief Executive Officer may not perform any other remunerative work, without the prior written consent of the Board.

(6) The Chief Executive Officer may, on three months' written notice tendered to the Board, resign from his or her office.

(7) Whenever the office of Chief Executive Officer is vacant or the Chief Executive Officer is absent or incapacitated or refuses or fails to act, the powers, rights and functions of the Chief Executive Officer shall be exercised and performed by any person designated as the acting Chief Executive Officer by the Member of the Executive Council: Provided that no such person shall be the acting Chief Executive Officer for a period exceeding six months.

(8) While a person appointed as contemplated in subsection (7), so acts, he or she shall have the powers and discharge the functions of the Chief Executive Officer.

(9) The Chief Executive Officer shall be a Member of the Board, *ex officio*, without voting powers.

16. Removal of Chief Executive Officer from office. (1) The Board may, in consultation with the Member of the Executive Council, remove the Chief Executive Officer from office -

- (a) on account of his or her improper conduct;
- (b) for unfitness for the functions of his or her office;
- (c) on the ground of a permanent infirmity of mind or body which renders him or her incapable of discharging the functions of his or her office or discharging them properly; or
- (d) on the ground that he or she is or has become subject to a disqualification envisaged in section 10.

(2) The Board may, in order to determine whether there exists sufficient cause for the removal of the Chief Executive Officer from office as contemplated in subsection (1), initiate an inquiry or investigation for that purpose.

(3) Whenever any inquiry or investigation is initiated as contemplated in subsection (2) is being undertaken, the Board may, in consultation with the Member of the Executive Council, and with due regard to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), suspend the Chief Executive Officer from his or her office pending the outcome of such an inquiry or investigation.

(4) For the purposes of subsection (1)(a), non-compliance by the Chief Executive Officer with any provision of this Act or the Public Finance Management Act, 1999 (Act No. 1 of 1999), *inter alia*, constitutes improper conduct.

17. Employment contract and performance agreement of Chief Executive Officer. (1) The appointment of the Chief Executive Officer by the Board as contemplated in section 15(3) shall be effective from the date of the entering into of a written employment contract with the Board, which employment contract shall be for the duration of his or her term of office as Chief Executive Officer.

(2) The employment contract contemplated in subsection (1) shall, as a minimum, contain the Chief Executive Officer's personal particulars, term of office, conditions of service, powers, functions, responsibilities, duties as well as his or her remuneration, allowances and benefits.

(3) In addition to the employment contract as contemplated in subsection (1), the Chief Executive Officer shall annually conclude a performance agreement with the Board, which performance agreement's term of operation shall coincide with the financial year of the Authority: Provided that such performance agreement shall annually be concluded prior to the commencement of the financial year concerned.

(4) The performance agreement contemplated in subsection (3) shall, as a minimum, contain a reference to the financial year to which such performance agreement pertains, the purpose of the

Chief Executive Officer's job, the key performance areas, financial and management criteria and standards, performance guidelines and targets of such job as well as the standards for measuring the performance of the Chief Executive Officer, by the Board, on at least a bi-annual basis.

18. Meetings of Board. (1) The first meeting of the Board shall be held at a place and time determined by the Chairperson, and subsequent meetings of the Board shall be held on such dates and at such times and places as may be determined by resolution of the Board or, failing such a resolution, as may be determined by the Chairperson.

(2) The Chairperson –

(a) may at any time call for a special meeting of the Board if it is justified under the circumstances; and

(b) shall, upon having been presented with a request for that purpose signed by at least three Members, or signed by the Member of the Executive Council, and stating the purpose for which a special meeting is to be convened, forthwith call for a special meeting of the Board, and if the Chairperson fails to convene a special meeting within seven days as from the date of such request, such three Members, or a Member on behalf of the Member of the Executive Council may, on the expiration of such seven days, convene a special meeting of the Board.

(3) Notice of every meeting of the Board shall state the business to be addressed at such meeting and shall be given to all the Members in such reasonable manner and form as the Board may from time to time determine.

(4) The quorum of the Board at a Board meeting shall be at least 51 per cent of the total number of Members.

19. Decisions of Board and voting powers of Chairperson. (1) A decision agreed upon by the majority of the Members eligible to vote at Board meetings present at any meeting of the Board, subject to section 7(2), constitutes a decision of the Board to be known as a resolution.

(2) In the event of an equality of votes regarding any matter put to the vote, the Chairperson has a casting vote in addition to his or her deliberative vote.

(3) No decision of the Board or an act on the authority of the Board, is invalid merely due to a vacancy in the Board or because any person who is not entitled to take a seat as Member, took a seat as a Member when the decision was taken or the act was authorised, if such decision was taken or the act was authorised by the required majority of the Members eligible to vote at Board meetings who were then present and who were entitled to take seats as Members.

(4) The Board shall cause a record to be kept of the proceedings of any meeting thereof and the Member of the Executive Council may at any reasonable time require that such record be submitted to him or her, for perusal.

(5) Whenever any matter to be dealt with by the Board is of such a nature that it requires the immediate and urgent attention of the Board and it is not possible for the Board to meet in order to attend to such matter, all relevant documentation pertaining to such matter shall forthwith be made available to each Member for consideration.

(6) Any matter as referred to in subsection (5) and agreed upon in writing by a simple majority of the Board Members will, subject to subsection (7), be a resolution of the Board.

(7) Any resolution as contemplated in subsection (6) shall be ratified by the Board at its next ensuing meeting and shall be so recorded.

20. Duty of Members to disclose interest. (1) A Member who has or acquires any direct or indirect financial interest in the liquor industry, shall forthwith disclose to the Board, in writing, full

particulars relating to the nature and extent of his or her interest in the liquor industry, and such Member shall further recuse himself or herself from any deliberation during a meeting of the Board from which he or she may potentially derive any direct or indirect financial benefit and he or she may not vote as a Member of the Board on any such matter.

(2) A Member who is interested in a proposed contract which the Board considers entering into or becomes interested in a contract after it has been entered into by the Authority, shall disclose to the Board full particulars relating to the nature and extent of his or her interest in accordance with the provisions of subsection (3) or (5), as the case may be.

(3) A Member referred to in subsection (2) who is interested in such a proposed contract shall -

- (a) if the proposed contract is or is to be considered at a meeting of the Board, disclose his or her interest prior to such meeting by way of a written notice to the Board or otherwise table such a notice at the meeting; or
- (b) if the proposed contract is not to be considered at a meeting referred to in paragraph (a), disclose his or her interest by way of a written notice to the Board within seven days as from the day on which he or she first became aware of the proposed contract or, if it has already been entered into, of the contract:

Provided that a written notice given by a Member to the Board thereof to the effect that he or she has an interest in a particular undertaking and is to be regarded as interested in every contract which may be entered into with such undertaking during a period specified in the notice, is for the purposes of this subsection deemed to be sufficient disclosure of interest with respect to all contracts entered into by the Authority with such undertaking during the specified period, provided further that -

- (i) full particulars relating to the nature and extent of such a Member's interest in such undertaking are set out in the notice; and
- (ii) the extent of such a Member's interest in such undertaking is at the time when a contract is entered into by the Authority with the undertaking, not greater than is set out in the notice.

(4) A Member referred to in subsection (2) shall recuse himself or herself from the meeting of the Board during the discussion of the contract in which he or she has an interest and may not take part in any vote in connection with any such discussion or contract or influence or seek to influence any Member as regards such Member's vote or participation in discussions in respect of such contract.

(5) A Member who becomes interested in a contract after it has been entered into by the Authority shall disclose his or her interest by way of a written notice to the Board within seven days as from the day on which he or she became so interested.

(6) A contract as referred to in subsection (2), (3), (4) or (5), which was entered into by the Board and in respect of which a Member did not comply with any of the provisions of subsection (2), (3), (4) or (5) may, by resolution of the Board and on good cause shown, be declared null and void, either partially or in full, and the Board may hold such Member personally liable for any losses or damage suffered by the Board, resulting from such Member's non-compliance with subsection (2), (3), (4) or (5).

(7) A disclosure of interest referred to in subsection (1), (2) or (3) shall, as soon as possible be recorded in the minutes of the appropriate meeting of the Board.

(8) Any disclosure as contemplated in either subsection (1), (2) or (3) shall forthwith be reported by the Chairperson to the Member of the Executive Council, in writing.

21. Delegation of powers. (1) The Board may, subject to such conditions as it may determine, in writing delegate any power or function conferred or imposed upon it under this Act, except the powers or functions conferred or imposed upon it under section 19 or this section, to -

- (a) the Chief Executive Officer;
- (b) the Chairperson;
- (c) a committee of Members; or
- (d) a committee of Members and personnel.

(2) A delegation under subsection (1) shall not prevent the Board itself from exercising the power or performing the function concerned.

22. Funding of the Authority. The Authority shall be funded by the Government with such moneys as may be appropriated by the Provincial Legislature, after consideration of strategic, corporate and business plans and a proposed budget of estimated revenue and expenditure, duly submitted by the Authority to the Member of the Executive Council, before or on 30 September of every year in respect of the ensuing financial year, as contemplated in section 53(1) of the Public Finance Management Act, 1999.

23. Revenue of the Authority. (1) For the purposes of achieving its objects, exercising its powers and performing its functions, the Authority shall utilise as its revenue -

- (a) fees and other moneys received or raised by it under the provisions of this Act or any other law;
- (b) penalties, fines, and proceeds from sales of forfeited items received or recovered and allocated to the Authority under the provisions of this Act or any other law;
- (c) such moneys as may be appropriated by the Provincial Legislature for the exercise of the powers and the performance of the functions conferred or imposed upon the Authority in terms of this Act or any other law;
- (d) donations, grants and bequests received by it from the public: Provided that conditional donations, grants or bequests shall be accepted by the Board, only after having obtained prior written approval from the Member of the Executive Council; and
- (e) any other money which may accrue or be appropriated to it, or which may be placed at its disposal from any other source whatsoever.

(2) The Board shall, subject to section 7 of the Public Finance Management Act, 1999, open and maintain, with a bank registered in South Africa in terms of the Banks Act, 1990 (Act No. 94 of 1990), an account to be known as the Mpumalanga Liquor Authority Account, into which account shall be deposited all the moneys received by the Authority as contemplated in subsection (1), read with section 22(5) of the Public Finance Management Act, 1999.

(3) The Board may, subject to any other law -

- (a) solicit donations, grants or bequests referred to in subsection (1)(d); and
- (b) subject to the terms and conditions relating to such donations, grants and bequests, utilise the moneys concerned in such manner as it may determine.

(4) Any surplus funds which, at any time, stand to the credit of the Mpumalanga Liquor Authority Account must, in accordance with the investment policy of the Authority, be invested with the Corporation for Public Deposits, as contemplated in Treasury Regulation 31.3.

24. Appropriation of income and property. The moneys appropriated by the Provincial Legislature to the Authority as contemplated in section 22, shall be utilized in accordance with such appropriation and all other income, property and profits of the Authority, shall be utilised exclusively for the achievement of its objects and in accordance with the provisions of this Act.

25. Procurement. (1) When procuring any supply or service, or hiring or letting anything or acquiring or granting any right or acquiring or disposing of any asset for or on behalf of the Authority as contemplated in section 6, the Board shall ensure that such procurement is effected in accordance with, and duly complies with –

- (a) the regulations made or instructions issued by the National Treasury in respect of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective as contemplated in section 76(4)(c) of the Public Finance Management Act, 1999;
- (b) the instructions issued by the Provincial Treasury as contemplated in section 18(2)(a) of the Public Finance Management Act, 1999, in respect of an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
- (c) the appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective as established by the Board, as contemplated in section 51(1)(a)(iii) of the Public Finance Management Act, 1999; and
- (d) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

(2) The Board shall adopt, within six months after the coming into operation of this Act, a procurement system consistent with subsection (1), which procurement system shall be utilised for the procurement of all supplies, goods and services, as well as the disposal of supplies and goods, by the Authority.

26. Committees of Board. (1) The Board may establish committees, with the power to co-opt other persons, for the purpose of assisting it with the due and proper exercise and performance of any of its powers and functions in terms of this Act, and may likewise dissolve, extend, enlarge or limit any committee so established.

(2)(a) A committee established under subsection (1), consists of no fewer than three Members designated by the Board being suitable and appropriately qualified or experienced regarding matters relating to the functions of the committee in question.

(b) The Board shall designate a Member serving on a committee as the chairperson of such committee.

(3) A co-opted member of a committee serves in an advisory capacity, and may not vote at any meeting of such committee.

27. Power of Board to make rules and determine procedures. The Board shall make internal rules and determine procedures regarding the holding of meetings of the Board and the holding of meetings of committees of the Board and the keeping of minutes of such meetings.

28. Bookkeeping and auditing. (1) The Board shall cause proper records to be kept of all moneys received or expended by the Authority, of all its assets and liabilities and of all financial transactions entered into by the Authority, in accordance with generally accepted accounting practices.

(2) The Board shall establish an Audit Committee for the Authority consisting of at least three persons in accordance with Treasury Regulation 27.

(3) The Audit Committee shall prepare, sign and submit to the Board, within 15 days of the end of each quarter, a report in respect of the operations, including the income and expenditure, of the Authority in respect of the preceding quarter.

29. Quarterly reports. (1) The Board shall submit to the Member of the Executive Council quarterly reports, in strict compliance with the relevant provisions of the Public Finance Management Act, 1999, and the Treasury Regulations, and which reports shall deal with the state of affairs, the activities, the operations, and the financial position of the Authority, including -

- (a) the extent to which the Authority has achieved or advanced its objects during the financial quarter concerned;
- (b) the relevant performance information regarding the economic, efficient and effective utilisation of resources;
- (c) the amount of money, if any, received from the Government or any other source and any other financial commitment furnished to the Authority; and
- (d) the detailed personnel establishment and composition of the Authority.

(2) The Member of the Executive Council shall cause copies of the quarterly report submitted to him or her in terms of subsection (1), to be tabled in the Provincial Legislature within 20 days of receipt thereof if the Provincial Legislature is in session, or if the Provincial Legislature is not in session, within 14 days after commencement of its ensuing session.

(3) Notwithstanding the provisions of subsection (1), the Member of the Executive Council may, at any time, request the Board to submit to him or her, an interim report pertaining to the state of affairs, the activities, the operations, and the financial position of the Authority or pertaining to any specific matter identified by the Member of the Executive Council, and shall be submitted to the Member of the Executive Council within 14 days after such request.

30. Annual report and financial statements. (1) The Board shall ensure that, in preparing and submitting its annual report and financial statements, it complies fully with section 55 of the Public Finance Management Act, 1999, and the Treasury Regulations.

- (2) The Board shall, in its annual report, as far as the exercise and performance of its powers and functions during the year being reported on, are concerned, also include reference to –
 - (a) its achievements;
 - (b) its failures;
 - (c) the financial implications of all such achievements and failures;
 - (d) any recommendations pertaining to the liquor industry in the Province, for consideration.

31. Prohibition of use of name of Mpumalanga Liquor Authority. No person, company or association of persons may carry on business under a name that is the same as or so closely resembles that of the Mpumalanga Liquor Authority that is calculated to or is reasonably likely to deceive.

32. Compulsory licencing. Subject to section 68, no person shall sell liquor or micro-manufacture liquor unless such person is so licenced in terms of this Act.

33. Categories of licences. (1) The Authority may only issue the following liquor licences in terms of this Act:

- (a) the retail sale of liquor for consumption on the premises where the liquor is sold;
- (b) the retail sale of liquor for consumption off the premises where the liquor is sold;
- (c) the retail sale of liquor for consumption on and off the premises where the liquor is sold;
- (d) the retail sale of liquor in terms of a special liquor licence for consumption on and off the premises where the liquor is sold;
- (e) the retail sale of liquor in terms of a special liquor licence in respect of a specified event;
- (f) the micro-manufacture and the retail sale of such micro-manufactured liquor for consumption on and off the premises where such liquor is sold; and
- (g) the micro-manufacture and retail sale of traditional African beer for consumption on and off the premises where such traditional African beer is sold.

(2) Subject to section 40, a licence referred to in subsection (1) shall be valid for a period not exceeding one year, annually renewable as contemplated in section 38.

(3) The Member of the Executive Council shall prescribe the requirements, the regulatory framework in respect of the terms and conditions of each of the categories of licences as contemplated in subsection (1), including the regulation of the type and maximum volume of receptacles in which liquor may be sold and the regulation of the delivery of liquor, to the extent that such delivery does not constitute the distribution of liquor.

34. Disqualification. (1) No person shall be licenced as contemplated in section 33, if that person –

- (a) is a minor at the date of submitting his or her application for a licence;
- (b) is an unrehabilitated insolvent;
- (c) is or becomes subject to an order of a competent Court declaring him or her to be of unsound mind or mentally disordered or defective;
- (d) has been convicted of a contravention of this Act within three years immediately preceding the date of application; or
- (e) has been convicted, under applicable legislation, of an offence the elements of which are inconsistent with the objects and purposes of this Act, at any time after the coming into operation of this Act but within three years immediately preceding the date of application.

(2) No company, close corporation, co-operative, association, partnership or trust shall be licenced or remain licenced if a person who is in terms of subsection (1) disqualified from being licenced -

- (a) has a controlling interest in that company, close corporation, co-operative, association or trust;
- (b) is a partner in such partnership;
- (c) is the main beneficiary under such trust,

as the case may be.

(3) A licenced person who is or becomes disqualified as contemplated in this section, shall forthwith inform the Authority, in writing, of such disqualification.

35. Application procedure. (1) An application for a licence and an application for every additional licence, shall be made by submitting the duly completed prescribed application form to the Authority.

(2) An application for a licence as contemplated in subsection (1) shall be accompanied by –

(a) a copy of the prescribed advertisement published by the applicant in the *Provincial Gazette* and a local newspaper circulating in the area concerned inviting public comments in respect of such application for a licence, with specific reference to any comments received from a Traditional Council established in terms of the Mpumalanga Traditional Leadership and Governance Act, 2005 (Act No. 3 of 2005), within which Traditional Council's area of jurisdiction, the application in question is being applied for; and

(b) the prescribed form containing the comments of the Municipality within which area of jurisdiction the premises in respect of which the licence concerned has been applied for, is situated, and in the instance that the application for a licence is supported by the Municipality concerned, the applicable terms and conditions subject to which such licence may be issued by the Authority.

(3) Upon submitting the application as contemplated in subsection (1), the applicant shall pay the non-refundable prescribed application fee.

(4) The Authority shall, within 60 days after receipt of an application, duly consider such application and documentation as contemplated in subsection (2), as well as any objection received by the Authority in response to the advertisement as contemplated in subsection (2)(a), and may issue the licence applied for to the applicant, including the applicable requirements, terms and conditions as determined by the Municipality concerned in terms of subsection (2)(b), if the Authority is satisfied that

- (a) the applicant is not disqualified as contemplated in section 34;
- (b) subject to subsection (9), the prescribed application fee has been paid;
- (c) the applicant is a suitable person to be issued with a licence;
- (d) the Municipality concerned supports the application; and
- (e) the granting of the licence is in the public interest, with due regard to the proximity of the premises concerned to, *inter alia*, educational institutions, public roads or religious institutions.

(5) If the application does not comply with the relevant provisions of this Act or if an objection was lodged in respect of the application, the Authority shall forthwith notify the applicant thereof in writing and inform the applicant that the applicant has 30 days from the date of the notice to comply with all the requirements or to respond to all objections lodged.

(6) The period contemplated in subsection (5) may be extended by the Authority on good cause shown by the applicant.

(7) If an applicant who has been served with a notice contemplated in subsection (5) fully complies with the requirements as set out in that notice and has duly responded to all objections lodged in respect of his or her application within the specified time period, the Authority shall duly reconsider such application.

(8) Upon request by an applicant for assistance, the Authority shall take such reasonable measures to assist such applicant in duly applying for a licence in terms of this Act.

(9) All costs associated with applying for a licence in terms of this Act, shall be borne by the applicant concerned: Provided that the Authority may, on good cause shown, resolve to bear all or a percentage of such costs associated with applying for a licence or a specified category of licence in terms of this Act, on behalf of any category of applicants, as prescribed.

(10) The Authority may cancel an approved application, if it discovered prior to the issuing of the licence certificate concerned, that the approval was based on false information provided to the Authority.

36. Death or incapacity of applicant. If a person who has made an application for a licence or an application for the renewal of a licence dies or becomes incapacitated –

- (a) the relevant administrator of the deceased estate, judicial manager or curator or, if such an administrator, manager or curator has not yet been appointed or the holder of that office is unable or unwilling to act, a person who has an interest in the application and is authorised thereto by the Authority shall, subject to any law regulating deceased estates or judicial management, acquire all the rights that the applicant would have had if he or she had not died or became incapacitated; and
- (b) the Authority may, subject to the provisions of this Act, issue the licence or renew the licence in favour of such an administrator, manager, curator or person.

37. Licence Certificate. (1) Upon issuing a licence in terms of this Act, the Authority shall issue a licence certificate to the applicant in the applicant's name in the prescribed form, which licence certificate shall, as a minimum, include –

- (a) a licence number;
- (b) the date on which the licence was issued;
- (c) the premises or place in respect of which a licence has been granted;
- (d) the requirements, terms and conditions upon which the licence was granted, subject to subsection (2);
- (e) the category of registration.

(2) The Authority may, on good cause shown or on request, subject to a recommendation in this regard by the Municipality concerned and with due regard to all relevant information, vary, in writing, a condition or conditions as contemplated in subsection (1), and shall forthwith notify the licenced person concerned, accordingly: Provided that, prior to the variation of any such condition or conditions other than upon request of the licenced person concerned, the Municipality concerned shall afford the licenced person an opportunity to make written representations in that regard, to such Municipality.

(3) The Municipality concerned may, prior to varying a condition or conditions as contemplated in subsection (2), cause an investigation or inspection to be conducted in respect of such proposed variation, the cost of which shall be borne by the licenced person requesting such variation.

38. Renewal of licence. (1) An application for the renewal of a licence shall be –

- (a) made in the prescribed manner;
- (b) made not less than 90 days before the date on which the licence concerned shall lapse; and
- (c) accompanied by the prescribed fee.

(2) If an application for the renewal of a licence is made less than 90 days before the date on which the licence concerned shall lapse, the Authority may require the applicant to pay, in addition to

the prescribed fee, an additional fee not exceeding double the prescribed fee, prior to considering such application as contemplated in subsection (3).

(3) Upon receipt of an application for renewal as contemplated in subsection (1) or subsection (2), the Authority shall, within 60 days after receipt of an application for renewal of a licence, duly consider such application.

(4) Should an application for renewal as contemplated in subsection (1) or subsection (2) be successful, the Authority shall, subject to subsection (5), forthwith issue a renewal certificate in the prescribed format to the applicant.

(5) Should the first application in terms of this Act for the renewal of a licence issued in terms of the Liquor Act, 1989, be successful, the Authority shall issue a new licence certificate in terms of this Act, to such licence holder, so as to replace the existing licence certificate.

(6) Should an application for renewal as contemplated in subsection (1) or subsection (2) be unsuccessful, the Authority shall forthwith inform the applicant accordingly and provide written reasons for its decision as well as the licenced person's right to make written representations to the Authority.

(7) Prior to implementing any decision as contemplated in subsection (2) or subsection (6), the Authority shall afford such licenced person an opportunity to make representations or provide explanations in respect of the evidence on which such decision is based.

39. Effects of licensing. (1) The licence certificate shall be sufficient proof that the licenced person has been duly licenced in terms of this Act.

(2) A licenced person shall reflect his, her or its licenced status and licence number on all of such person's trading documents, and shall display the original licence certificate at the fixed premises or place to which such licence relates.

(3) Upon the issuing of a licence, the licenced person shall be authorised to commence trading on the licenced premises or place as contained in the licence certificate in a manner consistent with this Act as well as the requirements, terms and conditions pertaining to such licence.

(4) A licenced person shall keep detailed records as prescribed in respect of the conduct of such licenced person's business in terms of this Act.

(5) A licenced person shall for the duration of the licence show a clear and continuous commitment to all National and Provincial policies, codes of conduct, guidelines and programmes in respect of combating alcohol abuse, including the negative social impact of alcohol abuse.

40. Cancellation of licence. (1) If a licenced person becomes disqualified as contemplated in section 34, or the Authority becomes aware that a licenced person is disqualified as contemplated in section 34, the Authority shall forthwith cancel the licence issued to such licenced person with effect from a specified date.

(2) If a licenced person has been convicted of the contravention of any provision of this Act, or any other law, of an offence the elements of which are inconsistent with the objects and purposes of this Act, at any time within the three years immediately preceding the date of the issuing of a licence, or if there exists *prima facie* evidence that a licenced person is contravening or has contravened any provision of this Act, or if it is discovered that the issuing of a licence was based on false information, the Authority shall, subject to subsection (4), and with due regard to all relevant facts and information at its disposal –

(a) cancel the licence concerned with effect from a specified date;

- (b) suspend the licence concerned and issue a notice to the licenced person to rectify the contravention concerned within a period of 30 days of the date of such notice;
- (c) issue a notice to the licenced person to rectify the contravention concerned within a period of 30 days of the date of such notice; or
- (d) issue a warning to the licenced person to refrain from such contravention in future.

(3) Subsequent to taking any decision as contemplated in subsection (1) or subsection (2), the Authority shall forthwith notify the licenced person concerned, in writing, of such decision, the evidence on which such decision is based, as well as the licenced person's right to make written representations or provide explanations to the Authority, in respect of such evidence before or on a date specified in such notice.

(4) Prior to implementing any decision as contemplated in subsection (1) or subsection (2), the Authority shall afford such licenced person an opportunity to make representations or provide explanations in respect of the evidence on which such decision is based.

(5) A licence shall be deemed to be cancelled, with effect from the commencement date of the sequestration, liquidation, winding-up or dissolution, as the case may be, of the licenced person in respect of which such licence has been issued.

(6) The licenced person contemplated in subsection (5) shall, with effect from the commencement date of the sequestration, liquidation, winding-up or dissolution, as the case may be, duly inform the Authority, in writing, of such sequestration, liquidation, winding-up or dissolution.

(7) When a licence has been cancelled, all the rights and benefits emanating therefrom shall lapse with immediate effect and the licenced person shall forthwith surrender to the Authority, his, her or its original licence certificate and renewal certificates, if any, issued by the Authority.

41. Voluntary cancellation of licence. (1) A licenced person may, in the prescribed manner, request the Authority to cancel his, her or its licence with effect from a specified date.

(2) The request as contemplated in subsection (1) shall be accompanied by written reasons for such request.

(3) The Authority shall upon receipt of a request as contemplated in subsection (1), and with due regard to the reasons submitted as contemplated in subsection (2), as well as any other relevant information, decide whether –

- (a) to cancel such licence with effect from a specified date; or
- (b) not to cancel such licence.

(4) The Authority shall forthwith inform the person requesting voluntary cancellation of its decision and provide written reasons for its decision.

(5) The licenced person shall, with effect from the date of cancellation of the licence concerned, surrender to the Authority his, her or its original licence certificate and renewal certificates, if any.

42. Change of controlling interest. (1) A licenced person shall not permit any other person to procure a controlling interest in the business to which the licence relates, unless the Authority has, on receipt of an application made by such licenced person in the prescribed manner, granted approval that such other person may procure a controlling interest in such business.

(2) If any person procures a controlling interest in the business to which a licence relates, without the prior knowledge of the licenced person, such licenced person shall, upon becoming aware thereof, forthwith inform the Authority accordingly.

(3) The Authority shall not grant approval in terms of subsection (1) in the instance where the person who intends procuring such controlling interest is disqualified to be a licenced person as contemplated in section 24.

43. Transfer of licence. (1) A licenced person shall, together with the new prospective holder of the licence concerned, apply to the Authority in the prescribed manner for the transfer of such licence from the licenced person to the prospective holder who shall be a person not disqualified to be a licenced person in terms of this Act.

(2) Section 35 shall apply, *mutatis mutandis*, to an application contemplated in subsection (1).

44. Prohibition on sale of liquor to certain persons. No person may sell liquor to –

- (a) any person who is under the age of 18 years; or
- (b) any person who is violent, drunk or disorderly or under the influence of a drug having a narcotic effect.

45. Management of business. (1) A person other than a natural person shall not conduct any business under a licence unless a natural person who is not disqualified in terms of this Act to be a licenced person, is appointed by that person in the prescribed manner to manage and be responsible for the business to which such licence relates.

(2) A natural person who is a licenced person may in the prescribed manner appoint another natural person who is not disqualified in terms of this Act to be a licenced person, to manage and be responsible for the business to which such licence relates.

(3) If a licenced person –

(a) or the only member of a company or close corporation which is a licenced person –

- (i) dies;
 - (ii) has abandoned the registered premises without making provision for the conduct thereon of the business to which the licence relates;
 - (iii) becomes a person who is disqualified in terms of this Act to be a licenced person; or
- (b) which is a partnership, is dissolved,

the Authority may, on application by a person who has an interest in the relevant business, appoint any person who is fit to manage and be responsible for such business for a period of not more than 12 months, and a person so appointed shall, subject to subsection (4), for the period of his or her appointment for all purposes be deemed to be the licenced person.

(4) An appointment under subsection (3) –

- (a) shall be subject to the conditions set out in the appointment that the Authority may reasonably impose;
- (b) shall not affect any right of a person who has an interest in the business concerned; and
- (c) may be withdrawn by the Authority on good cause shown.

(5) A person managing and responsible for a business to which a licence relates shall be subject to the same conditions, obligations and liabilities as the relevant licenced person.

(6) An appointment as contemplated in subsections (1), (2) and (3) shall not release the licenced person from any condition, obligation or liability to which he, she or it is subject in law.

(7) A licenced person shall ensure that no illegal acts take place on the premises in respect of which the licence concerned has been issued.

46. Trading hours. Subject to the prescribed requirements, regulatory framework in respect of the terms and conditions and any other law, the Authority shall, when issuing a licence under this Act, restrict the days and hours during which a licenced person may sell liquor in terms of such licence, in accordance with the recommendation made by the Municipality concerned.

47. Limitations on employers. (1) No licenced person may employ any person in or in connection with the sale of liquor who –

(a) is under the age of 16 years; or

(b) has within the preceding three years been convicted of a contravention of this Act.

(2) Subsection (1)(a) does not apply to any person of the age of 15 years who is undergoing training in catering services, and who is employed by the licenced person as part of such training.

48. Quality of liquor and prohibition in respect of unhealthy concoctions. (1) No person shall sell to any person liquor as being of a particular kind or brand or as the product of a particular person, which liquor is not of that kind or brand or the product of such person.

(2) No person shall micro-manufacture, have in his or her possession, custody or under his or her control or consume or sell to any person any concoction manufactured by the fermentation of any substance, the consumption of which may be harmful to any person's health or wellbeing and which is specified as such by any Minister by notice in the *Government Gazette* or which is specified as such in terms of subsection (4), by the Member of the Executive Council, by notice in the *Provincial Gazette*.

(3) No person shall micro-manufacture, have in his or her possession, custody or under his or her control or consume or sell to any person any drink manufactured by the distillation of any liquor or concoction referred to in subsection (1) or subsection (2).

(4) The Member of the Executive Council may specify, by notice in the *Provincial Gazette*, any concoction manufactured by the fermentation of any substance, and the consumption of which may be harmful to any person's health or wellbeing.

49. Methylated spirits. The Member of the Executive Council, in consultation with the National Minister responsible for liquor matters, and subject to section 5 of the National Act, may prescribe controlling or regulating measures in respect of methylated spirits.

50. Order for suspension, cancellation and disqualification. A Court may, on conviction of any person of the contravention of any provision of this Act, in addition to imposing a sentence, issue an order cancelling a licence, suspending a licence or declaring such person unfit to remain or become a licenced person: Provided that such order or declaration may be effective for an indefinite period or be made effective only for a limited specified period or such order or declaration may be suspended.

51. Summons to appear. (1) The Authority may cause any person who is or may be affected by or is involved in the consideration of a particular matter by the Authority, to be summonsed in the prescribed manner to be present at any meeting of the Authority, Board or committee thereof, indicating to him or her the date, time and place of the meeting at which his or her presence is required and the relevant matter to be considered thereat, and may further request such person –

(a) to give evidence; or

(b) to produce any document or any other thing which is in his or her possession or custody or under his or her control and which relates or may relate to a matter to be considered at such meeting.

(2) A person who has been summonsed in terms of subsection (1) shall personally appear before the Authority, Board or committee thereof, as the case may be, on the date and at the time and place set out in the summons and may appoint any person to assist him or her at such meeting.

52. Designation of inspectors by Authority. (1) The Authority may designate such officers or employees of the Authority as inspectors for the purposes of this Act.

(2) An inspector shall perform –

- (a) such functions as the Authority may determine in writing; and
- (b) such other functions in connection with the administration of this Act as may be assigned to him or her by the Authority, in writing.

(3) An inspector shall be provided with a certificate, signed on behalf of the Authority, declaring that he or she has been duly designated as an inspector for the purposes of this Act.

(4) An inspector performing any function in terms of subsection (2) shall, on demand by any person affected by the performance of that function, produce the certificate with which he or she has been provided in terms of subsection (3), to such person.

53. Designation of inspectors by Commissioner. The Provincial Commissioner of the South African Police Services may designate any police officer who is authorized and capable to effectively and efficiently exercise and perform the powers and functions of an inspector in terms of this Act, to perform such powers and functions.

54. Powers and functions of inspectors. (1) Subject to subsection (2), an inspector may in the exercise and performance of his or her powers and functions –

- (a) at all reasonable times, with the permission of the person who is present and in charge of the premises or place, enter any licenced premises, any premises in respect of which an application for a licence has been made, or any premises on, or place in which liquor is sold or micro-manufactures or is suspected of being sold or micro-manufactured and, after having informed the person who is present and in charge of the premises or place, of the purpose of his or her visit, conduct such investigation or enquiry, as may be necessary, including whether or not the licence conditions concerned are being complied with;
- (b) at any time enter, search or inspect, with a warrant issued by a Judge or Magistrate, as the case may be, any premises, place, person, vehicle, object or liquor, whether found on such premises or in such place or vehicle or not, if there are reasonable grounds to suspect that an offence in terms of this Act is being committed or has been committed on, in, by means of or in respect of such premises, place, person, vehicle, object or liquor, and may arrest such person or seize such vehicle, object or liquor if there are reasonable grounds to suspect that an offence in terms of this Act has been committed;
- (c) at any time demand from any person contemplated in paragraph (a) or paragraph (b), that such person forthwith, or at a later time and place determined by the inspector produce to the inspector, any record or other document which is in the possession or custody or under the control of such person or any other person who has such record or other document in his or her possession or custody;
- (d) inspect such record or other document and make copies thereof or extracts therefrom, and demand from any person contemplated in paragraph (a) or paragraph (b) an explanation of any entry therein;

- (e) identify any record or document as contemplated in paragraph (d), which record or document may constitute evidence in respect of any contravention of this Act and may subsequently seize any such record or document;
- (f) question a licenced person, or any person who manages or is responsible for the business to which a licence relates or who has made an application for a licence, or any employee of such licenced person or any other person whom he or she finds on the premises or in a place entered by him or her in terms of paragraph (a) or paragraph (b);
- (g) order any person contemplated in paragraphs (a), (b), (c), (d), (e) or (f) to appear before him or her at a reasonable time and place determined by the inspector, and at that time and place question that person with regard to any matter which the inspector is investigating; and
- (h) monitor the control by Municipalities within their areas of jurisdiction of undertakings that sell liquor to the public as contemplated in section 155(6)(a), read with Part B of Schedule 5 of the Constitution.

(2) An inspector as contemplated in section 52, shall, in exercising and performing any power or function as contemplated in subsection (1)(b), (e) and (h), be accompanied by a Member or Members of the South African Police Services, who shall be responsible to effect any such arrest of any person or any such seizure of any vehicle, object, liquor, record or document or such closure.

(3) Subsection (2) does not preclude the exercise or performance of any power or function as contemplated in subsection 1(b), (e) and (h) by an inspector designated in terms of section 53.

(4) The powers and functions as contemplated in subsection (1)(b) may be exercised and performed by a Member of the South African Police Services or by an inspector as contemplated in section 53, without a warrant -

- (a) if the person in charge of the premises consents to the search or if the person who may consent to the search of the premises consents to such search; or
- (b) if such inspector on reasonable grounds believes -
 - (i) that a warrant will be issued to him or her as contemplated in subsection (1)(b) if he or she applies for such warrant; and
 - (ii) that the delay in obtaining such warrant would defeat the object of the search.

(5) Any person who is in charge of any premises or place contemplated in subsection (1) shall at all reasonable times while an inspector is on such premises or in such place, render such assistance as that inspector may reasonably require in the exercise and performance of his or her powers or functions.

55. Reports by inspectors. An inspector shall -

- (a) in respect of the exercise and performance of every power and function in terms of this Act, forthwith report thereon, in writing, to the Authority, for its consideration;
- (b) at the request of the Authority, furnish such further information as may be required in connection with any matter, to the Authority.

56. Demanding of names and addresses. Subject to section 54 an inspector may –

- (a) demand the name and address of any person whom he or she finds on premises or in a place or vehicle from which he or she removes or on or in which he or she seizes any object under this Act or any other law;

- (b) if such a person refuses or fails to furnish his or her full name and address so demanded, the member of the South African Police Services as contemplated in section 54(2) or (3), may arrest such person;
- (c) if such a person, when his or her name and address is so demanded, furnishes a name and address which that inspector on reasonable grounds suspects to be false or misleading, the member of the South African Police Services as contemplated in section 54(2) or (3), may arrest and detain that person for a period of not more than 12 hours until the name and address so furnished have been verified.

57. Regulations. (1) The Member of the Executive Council may, after consultation with the Authority and in consultation with the Executive Council, make regulations regarding any requirements to be complied with in terms of this Act and any other matter which the Member of the Executive Council must prescribe in terms of this Act.

(2) The Member of the Executive Council shall, within six months after the coming into operation of this Act, make regulations pertaining to all matters that shall be prescribed in terms of this Act.

(3) Regulations made in terms of subsection (1) may provide for penalties for any contravention thereof.

(4) Regulations made in terms of subsection (1), will be effective from the date of publication thereof in the *Provincial Gazette*, by the Member of the Executive Council.

58. Appeals and reviews. (1) Any person whose rights or legitimate expectations have materially and adversely been affected by a decision of the Authority may, within 20 days of being informed of such decision, appeal to the Member of the Executive Council, in writing, as prescribed.

(2) The Member of the Executive Council shall, within 30 days of receipt of an appeal as contemplated in subsection (1), duly consider such appeal and inform the appellant, in writing, of his or her decision in this regard.

(3) Subject to subsection (1), any decision of the Authority in terms of this Act shall be subject to review to the extent provided for, and in accordance with, the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

59. Offences in general. (1) Any person who –

- (a) sells any liquor or micro-manufactures liquor otherwise than under a licence issued in terms of this Act;
- (b) is violent, drunk or disorderly on any premises on which liquor may by virtue of this Act be sold;
- (c) is drunk in or on or near –
 - (i) any road, street, lane, thoroughfare, square, park or market;
 - (ii) any shop, warehouse or public garage; or
 - (iii) any place of entertainment, café, eating-house or race-course or any other premises or place to which the public has or is granted access, irrespective of whether access is granted against payment or is restricted to any category of persons or not;
- (d) subject to subsection (2), consumes any liquor in any road, street, lane or thoroughfare, or on vacant land adjacent thereto, in an urban area or other area subdivided into erven or plots with streets bounded by such erven or plots;

- (e) consumes or possesses any liquor on any private premises without the consent of the owner or lawful occupier of those premises first having been obtained;
- (f) introduces, possesses or consumes any liquor on a sportsground or any part thereof, to which the public has or is granted access to, irrespective of whether access is granted against payment or is restricted to any category of persons or not, except –
 - (i) on any licenced premises situated on the sportsground concerned; or
 - (ii) in so far as a declaration under subsection (4) applies thereto;
- (g) being a person who owns a sportsground in respect of which a declaration under subsection (4) applies or who lawfully occupies such a sportsground, refuses or fails to comply with any condition to which that declaration is subject;
- (h) falsely represents himself or herself or any other person to belong or not to belong to a category of persons in order to persuade the holder of a licence, or his or her agent or employee, to sell or supply liquor to him or to her or that other person which may by virtue of this Act not be sold or supplied to a person who does not belong or belongs to that category;
- (i) being the holder of a licence or the manager or agent of such a holder or person, on receipt of an order given under section 54(1)(h) refuses or fails to comply forthwith with such order;
- (j) supplies liquor to a person in his or her employ as wages or remuneration or as a supplement therefor; or
- (k) contravenes any provision of this Act,

shall be guilty of an offence.

- (2) Subsection (1)(d) shall not apply with regard to –
 - (a) the consumption of liquor on vacant land contemplated in that subsection if the liquor has been sold on that land under an on consumption licence;
 - (b) a social occasion held on that land by a person who owns or lawfully occupies the land; or
 - (c) the use of that land by that person in the ordinary course of his or her occupation thereof.

(3) In the application of subsection (1)(e), any person occupying the premises concerned as an employee of the owner or lawful occupier of the land on which those premises are situated, shall be deemed not to be the lawful occupier of the premises.

(4) The Authority may, on application by a person who owns or lawfully occupies a sportsground and subject to such conditions set out in the declaration as the Municipality concerned may recommend, declare that subsection (1)(f) shall not apply in respect of the sportsground concerned or any part thereof for the purposes of a particular occasion.

60. Offences regarding information. Any person who –

- (a) in connection with any application, objection, representations, reply to any objection or representations or complaint in terms of this Act, submits or provides any information which he or she knows to be false or misleading or does not know whether it is true, or submits or provides any false document or document which purports to be but is not a true copy of an original document; or

- (b) refuses or fails to comply with any request made in terms of this Act, or on such a request furnishes any information which is false or misleading, knowing it to be false or misleading,

shall be guilty of an offence.

61. Offences regarding meetings of Authority. Any person who –

- (a) having been summonsed in terms of section 51 to appear –
- (i) fails so to appear on the date and at the time and place set out in the summons; or
 - (ii) without permission of the chairperson of such meeting, fails to remain in attendance at such meeting until the conclusion thereof;
- (b) having been called upon by the chairperson concerned to give evidence shall answer every question truthfully and to the best of his or her ability: Provided that any such answer shall not be used or admitted in criminal proceedings against such person, except in proceedings against such person on a charge relating to –
- (i) the administration or taking of an oath;
 - (ii) the making of false statements; or
 - (iii) the failure to answer a lawful question fully and satisfactorily;
- and any person failing to answer every question put to him or her truthfully and to the best of his or her ability;
- (c) having in terms of section 51 been ordered by the chairperson concerned to produce any document or any other thing which is in his or her possession or custody or under his or her control, refuses or fails to comply with the order;
- (d) having in terms of section 51 been required by the chairperson concerned to give evidence under oath or after the making of an affirmation, refuses to take the oath or make the affirmation;
- (e) wilfully interrupts the proceedings at any meeting of the Authority, Board or committee thereof, or wilfully hinders or obstructs any such member thereof in the performance of his or her functions at such meeting,

shall be guilty of an offence.

62. Offences regarding inspectors. Any person who –

- (a) falsely holds himself or herself out to be an inspector;
- (b) refuses or fails to answer to the best of his or her knowledge any relevant question which an inspector has in the exercise and performance of his or her powers and functions put to him or her;
- (c) makes a statement to an inspector which is false or misleading in any material respect, knowing it to be false or misleading;
- (d) refuses or fails to comply to the best of his or her ability with any lawful demand, order or requirement of an inspector;
- (e) hinders or obstructs an inspector in the exercise of his or her powers; or

- (f) refuses or fails to comply with a demand contemplated in section 56, or on such a demand furnishes any name or address which is false or misleading, knowing it to be false or misleading,

shall be guilty of an offence.

63. Offences regarding licences. Any person who enters into, or is a party to any agreement which seeks to either limit or extend the scope and extent of a licence issued in terms of this Act, or any of the requirements, terms and conditions pertaining to such licence, shall be guilty of an offence.

64. Offences by holders of on consumption licences. The holder of any on consumption licence who –

- (a) allows drunkenness or licentious conduct on the licenced premises;
- (b) allows the licenced premises to be used as a brothel;
- (c) allows any person to perform an offensive, indecent or obscene act,

shall be guilty of an offence.

65. Offences by holders of off consumption licences. The holder of an off consumption licence who opens or allows to be opened on the licenced premises any receptacle containing liquor sold by him or her or who allows the consumption of liquor on such licenced premises, shall be guilty of an offence.

66. Penalties. Any person who contravenes any provision of this Act, is guilty of an offence and liable to a fine as may be determined from time to time or imprisonment for a period not exceeding two years or to both such fine and imprisonment.

67. Declaration of forfeiture. (1) Whenever any person is convicted of an offence under this Act, the Court convicting such person may, in addition to any sanction which that Court may impose in respect of the offence, declare any moneys, documents, books, records, equipment, devices, machines, contrivances, instruments, vehicles, vessels, aircraft, containers, objects or liquor by means of which the offence was committed, and which was seized under section 54(1)(b) or (e) of this Act, or is in the possession or custody or under the control of the convicted person, to be forfeited to the Authority.

(2) Anything forfeited under subsection (1) shall, if it was seized under section 54(1)(b) or (e), be kept or, if it is in the possession or custody or under the control of the convicted person, be seized and kept –

- (a) for a period of 30 days from the date of the declaration of forfeiture; or
- (b) if any person has within the period contemplated in paragraph (a) made an application to the Court concerned regarding such person's interest in such thing, until a final decision has been made by such Court in respect of any such application.

68. Transitional arrangements. (1) Subject to the provisions of this Act –

- (a) every exemption in force at the date of commencement of this Act, shall be deemed from that date to be an exemption in force for a period of 12 months;
- (b) every licence and the licence conditions in force at the date of commencement of this Act, shall be deemed from that date to be a licence or licence conditions in terms of this Act, for a period of 12 months;

(c) a notice issued under section 33 of the Liquor Act, 1989, in respect of an application for a licence and in force at the date of commencement of this Act, shall be deemed from that date to be a notice in terms of this Act for a period of 12 months from the date that such notice was issued.

(2) Any application for a liquor licence duly lodged with the Mpumalanga Liquor Board at the date of commencement of this Act, shall, with due regard to the provisions of the Liquor Act, 1989, be dealt with by the Authority, *mutatis mutandis*, as an application duly lodged in terms of this Act.

(3) The Authority shall, at the date of commencement of this Act, become the successor-in-title to the Mpumalanga Liquor Board instituted in terms of section 5 of the Liquor Act, 1989.

(4) Subject to the Public Service Act, 1994 (Proclamation No. 103 of 1994), employees of the Department may by agreement between the Authority and the Department and with their consent, be transferred to the service of the Authority in a permanent capacity.

69. Short title and commencement. (1) This Act shall be called the Mpumalanga Liquor Licencing Act, 2006, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

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