ALCOHOL, DRUGS AND TOBACCO

Brewers & Distillers Licences Duty Proclamation 3 of 1924.

**Summary:** This Proclamation (OG 127) provides for the payment of licence duties by brewers of beer and distillers of wine brandy and spirits. It was extended to the Rehoboth Gebiet by Proc. 12/1930 (OG 365).

**Amendments:** This Proclamation is amended by Ord. 9/1935 (OG 613), Ord. 14/1937 (OG 716), Ord. 1/1938 (OG 744) and Ord. 47/1952 (OG 1732). The Liquor Act of 1998 (GG 1843), which was brought into force on 22 December 2001 (GN 250/2001, GG 2670), amends sections 1, 2, 3 and 3bis.


**Summary:** This Act (RSA GG 3118) restricts dealings in dependence-producing drugs and establishes rehabilitation centres for treatment of people with drug problems.

**Applicability to SWA:** Section 1 defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”. Section 64 states “This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel.”

**Transfer of administration to SWA:** Section 53 of this Act states that the State President may assign the administration of all or part of the Act to one or more South African Ministers.

The administration of this Act was partially transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977) dated 28 September 1977, as amended. This transfer proclamation applies to matters which were administered by the South African Minister of Bantu Administration and Development, and the South African Minister of Coloured, Rehoboth and Nama Relations. Section 3(2)(e) of the transfer proclamation excluded sections 12 and 50(1) of the Act from the operation of section 3(1) of the General Proclamation.

The administration of this Act was further transferred to SWA by the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977, and the Executive Powers (Health) Transfer Proclamation (AG 14/1977), dated 1 December 1977. Both of these Transfer Proclamations excluded sections 12 and 50(1) of the Act, and the reference to the “Government of the Republic” in section 50(2) of the Act, from the operation of section 3(1) of the General Proclamation.

None of the amendments to the Act in South Africa after the date of the earliest transfer proclamation were made expressly applicable to SWA.

**Amendments:** The following pre-independence South African amendments were applicable to SWA –

ALCOHOL, DRUGS AND TOBACCO-1
• RSA Proclamation R.32 of 1972 (RSA GG 3390)
• RSA Proclamation R.263 of 1972 (RSA GG 3682)
• RSA Proclamation R.155 of 1973 (RSA GG 3957)
• Abuse of Dependence-producing Substances and Rehabilitation Centres Amendment Act 80 of 1973 (RSA GG 3971)
• Medical, Dental and Supplementary Health Service Professions Act 56 of 1974 (RSA GG 4445)
• RSA Proclamation 243 of 1975 (RSA GG 4883)
• RSA Proclamation 25 of 1976 (RSA GG 4988)
• RSA Proclamation R.141 of 1976 (RSA GG 5237)
• RSA Proclamation 239 of 1976 (RSA GG 5328)
• Abuse of Dependence-producing Substances and Rehabilitation Centres Amendment Act 14 of 1977 (RSA GG 5446)
• Criminal Procedure Act 51 of 1977 (RSA GG 5532)
• RSA Proclamation 277 of 1977 (RSA GG 5789).

Certain terminology in the Act was amended by Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

The Act was also amended prior to independence by Act 25/1987 (OG 5462).

Cases:
S v Cachimbembo 1990 NR 290 (HC)
S v Mariu 1991 NR 149 (HC)
S v Kuvare 1992 NR 7 (HC)
S v Kharigub & Another 1992 NR 27 (HC)
S v Van Wyk 1992 NR 267 (HC)
S v Johny & Another 1992 NR 296 (HC)
S v Maniping/S v Thwala 1994 NR 69 (HC)
S v Mtehini 1995 NR 127 (HC)
S v Mlambo 1997 NR 221 (HC)
S v Begley 2000 NR 112(HC)
S v Sibonyoni 2001 NR 22 (HC)
S v Rooi 2007 (1) NR 282 (HC)
S v Schako 2009 (1) NR 61 (HC)
S v Ipumbuyu 2009 (2) NR 546 (HC)
S v Paulo & Another (Attorney-General as amicus curiae) 2013 (2) NR 366 (SC).

Commissions: The National Drug Control Commission was established by Cabinet decision in 1999, to advise the government on drug policy and on the implementation of international conventions on drugs. Members of this Commission are announced in GN 202/2003 (GG 3060).

Related international agreements:
Convention on Psychotropic Substances, 1971
SADC Protocol on Combating Illicit Drug Trafficking in the Southern African Region, 1996

Summary: This Act (GG 1843) consolidates and amends the laws relating to the sale and supply of liquor. It came into force on 22 December 2001 (GN 250/2001, GG 2670). It replaces the following laws pertaining to liquor:

- Kaffir Beer (Rural Areas) Control Ordinance 36 of 1957
- Chapter V, Railways and Harbours Control and Management Consolidation Act 70 of 1957
- section 22, General Law Amendment Act 102 of 1967
- Supply and sale of liquor to Natives in South West Africa and the brewing and supplying of Kaffir Beer in South West Africa, RSA Proclamation 205 of 1968
- Liquor Ordinance 2 of 1969
- Arrangement appertaining to the sale and supply of liquor in Walvis Bay, 1984 (RSA Proc. R.21 of 1984)
- section 5, National Transport Corporation Act 21 of 1987 (which was in the interim repealed by the National Transport Services Holding Company Act 28 of 1998 (GG 1961), with effect from 1 April 1999).

In addition to regulating the licensing process, the Act forbids the sale of drinks that are more than 3% alcohol to persons under 18, prohibits the supply of liquor to employees as remuneration and forbids the consumption of liquor in public places.

Amendments: The Fourth Schedule of the Act is amended by GN 251/2001 (GG 2670) and substituted by GN 104/2006 (GG 3665) which contains requirements for shebeens. Act 5/2009 (GG 4307) substitutes the expression “Chief Magistrate” for “Chief of Lower Courts” wherever it appears.

The Child Care and Protection Act 3 of 2015 (GG 5744), which is not yet in force, substitutes section 56, repeals paragraphs 70(h) and 71(1)(s) and amends section 72.

Regulations: Regulations made under any of the laws repealed by the Act survive in terms of section 86 of the Act.

Regulations under the new Act are contained in GN 142/2001 (GG 2575), as amended by GN 105/2006 (GG 3665) and GN 18/2015 (GG 5668) (which substitutes Regulation 75). These regulations came into force on the same date as the Act.

The Government Notice which issues these regulations purports to repeal GN 49/1969 and all the amendments thereof. However, SWA GN 49/1969 (OG 2981) contained no regulations. It was the Government Notice which promulgated the Liquor Ordinance 2 of 1969. That Ordinance and its amendments were repealed by section 86(1) of the Liquor Act 6 of 1998 (GG 1843).

Cases: The following cases pertain to the Liquor Act 6 of 1998:
  S v Teek 2009 (1) NR 127 (SC) (addresses credibility of child evidence in
case involving allegations under section 71(s) of Act)
  Orangerivierwynkelders Koöperatief Bpk & Another v Professional
  Support Service CC & Others 2011 (1) NR 184 (HC) (sections
  18-19 discussed at 189B-191B; special costs order denied to
  respondents who were acting in breach of sections 2 and 49)
  S v Shitana & Another 2012 (1) NR 363 (HC) (charge under section
  71(1)(n) requires evidence that the liquor sold satisfies the
  definition of “liquor” in section 1).

The following cases pertain to the Liquor Ordinance 2 of 1969 which was
replaced by the Liquor Act 6 of 1998:
  Marais v The Chairman of the Liquor Licensing Board of Namibia
  1991 NR 306 (HC)
  Swanepoel v Marais & Others 1992 NR 1 (HC)
  Weyand v Chairman, Liquor Licensing Board 1993 NR 150 (HC).

Commentary: Legal Assistance Centre, Alcohol and Youths: Suggestions for
Law Reform, Monograph 4, 2009, Legal Assistance Centre, available at

Tobacco Products Control Act 1 of 2010.

Summary: This Act (GG 4458) establishes a Tobacco Products Control
Committee and a Tobacco Products Control Fund and provides measures to
reduce supply and demand in respect of tobacco products, to prohibit the sale of
tobacco to persons under 18 and to protect against exposure to tobacco smoke. It
is designed to make Namibia compliant with the World Health Organisation
Framework Convention on Tobacco Control. The Act was brought into force on
1 April 2014 (GN 34/2014, GG 5430).

Regulations: Proposed regulations were published in GN 209/2011 (GG 4831).

Regulations were published in GN 35/2014 (GG 5430). Certain of these
regulations had a delayed commencement, in terms of Regulation 17. Regulations
2, 3, 4, 10 and 12 came into operation in the case of wholesalers of tobacco
products, on a date 12 months from the date of commencement of the Act, and in
the case of retailers of tobacco products, on a date 18 months from the date of
commencement of the Act. Regulations 5, 6, 7, 8, 9 and 15 came into operation
on a date three months from the date of commencement of the Act.

Related international agreement: WHO Framework Convention on Tobacco
Control, 2003 (entered into force internationally on 27 February 2005; signature:
29 January 2004; ratification approved by Parliament: 26 October 2005; deposit:
7 November 2005; effective date: 5 February 2006). (source: WHO,
www.who.int/fctc)

INTERNATIONAL LAW
  Convention on Psychotropic Substances, 1971
  Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March
  1972
*United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988*

*WHO Framework Convention on Tobacco Control, 2003*

*SADC Protocol on Combating Illicit Drug Trafficking in the Southern African Region, 1996*

See also Tobacco Growers Protection Ordinance 2 of 1933 (AGRICULTURE).

See also CRIMINAL LAW AND PROCEDURE.

See also Ordinance for Prevention and Combating of Alcoholism and Anti-Social Conduct 11 of 1965 (HEALTH).

See also Medicines and Related Substances Control Act 13 of 2003 (MEDICINE).