Section 9: Benchmarking of the Regulation of Various Sectors in South Africa

9.1   Introduction

Regulation of the following sectors in South Africa was researched and analysed:

- BEE charters;
- Pleasure vessel boating;
- Scuba-diving;
- Go-karting;
- Hiking; and
- Liquor licensing.

Examples of regulatory bodies responsible for regulation in other sectors were investigated to determine what these bodies do, how they were created etc. Amongst the key information obtained was whether or not legislation was required to establish these entities. The following organisations were investigated:

- Amateur radio licensing;
- SA Stud Book;
- ASA; and
- BCCSA.

In addition, an overview of accreditation and grading practices in a number of sectors has also been included.

9.2   Examples of Regulatory Bodies

9.3.1   Amateur Radio Licensing

Overview

Amateur radio licensing in South Africa was included at the request of the Client, as a good example of self-regulation within a regulatory / statutory framework

Radio amateurs, known as "Hams" use two-way radio communication to make contact with other radio amateurs all over the world. They are able to use satellites and can operate from just about anywhere.

Amateur radio licensing is regulated by the Telecommunications Act of 1996, as amended. Radio Regulations specify the requirements, privileges and responsibilities of amateur radio operators. Amateur radio is regulated by the Department of Communication, while licensing is handled by the Independent Communication Authority of South Africa ("**ICASA**"), through the South African Radio League ("**SARL**").

ICASA regulates the telecommunication and broadcasting industries in the public interest. Its functions are to:

- Make regulations and policies that govern broadcasting and telecommunication;
- Issue licenses to providers of telecommunication services and broadcasters;
- Monitor the environment and enforce compliance with rules, regulations and policies;
- Hear and decide on disputes and complaints brought by industry members of the public against licensees;
- Plan, control and manage the frequency spectrum; and
- Protect consumers from unfair business practices, poor quality services and harmful or inferior products.

ICASA is regulated by various pieces of legislation.

SARL has been officially recognised by the Department of Communications as the national body for amateur radio in South Africa.

SARL is a membership organisation, which represents the interests of amateur radio in South Africa to all levels of government.

SARL is both a regulatory and representative body, as indicated by its various functions, viz:

- **Regulatory** – Acts as an agent of ICASA to, viz:
    - Set, mark and administer the Radio Amateur's Examination on behalf of ICASA; and
    - Conduct morse code tests for class A and novice licencees on behalf of ICASA.

- **Representative** – Acts as representative body for the industry to, viz:
    - Draw up and administer the national Amateur Radio Band Plan in line with international agreements and recommendations;

- – Organise and host a number of national and international events each year;
- – Publish a weekly SARL news bulletin and Amateur Radio Mirror International, which carry news, information and items of interest to radio amateurs; and.
- – Operate intruder watch to monitor and have removed non-amateur intruders into the amateur bands.

Licensing

In amateur radio, the licence is awarded to a person, and radio amateurs must be qualified operators.

In order to get a licence, a one must pass the Radio Amateur's Examination. These courses are conducted by many clubs around the country.

SARL in conjunction with ICASA prepare exam papers, but the license is eventually awarded by ICASA.

South African amateur radio operators do not have to be a member of a club, but it is compulsory that they obtain a radio licence.

Conclusion

The amateur radio sector in South Africa is a good example of self-regulation within a regulatory framework, with government (i.e. ICASA) devolving compliance and other processes to the SARL, as specified in relevant legislation.

Thus although obtaining a licence is compulsory (legislated) if a person wishes to operate as an amateur radio operator, the way in which this is done involves a self-regulation mechanism i.e. SARL.

Although the SARL operates on behalf of ICASA to administer the Radio Amateur's Examination (which a potential operator must pass, for a licence to be awarded), the licence is ultimately awarded by ICASA.

9.3.2   SA Stud Book

Overview

SA Stud Book was declared under the Animal Improvement Act, Act 62 of 1998, as a competent body to carry out various regulatory functions. The association consists of 63 breeding societies, and can be compared to the Department of Home Affairs i.e. what the

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Department of Home Affairs does for humans, SA Stud Book does for animals e.g. recording the maternity and paternity of animals etc.

Roles and Responsibilities

Under the Act and its constitution, SA Stud Book acts as a regulator within the animal breeding industry, and all associations registered with SA Stud Book are required to adhere to the constitution.

Under the Act and its constitution, the objectives and powers of SA Stud Book are:

- To keep records of the pedigrees, recording certificates and performance data of animals and to issue certificates of registration and recording and to publish such pedigrees and recordings in the form decided on by the Association in collaboration with the animal breeders' society;
- To encourage and promote the breeding and genetic improvement of the production potential of animals in South Africa;
- To verify the pedigrees of imported animals;
- To exercise any duties imposed upon or assigned to it in terms of the Act;
- To, jointly with the Agricultural Research Council: Animal Improvement Institute, manage the Intergis 2000;
- To determine the conditions for membership of the Association;
- To grant membership to animal breeders' societies;
- To safeguard and advance the common interests of breeders of pure-bred animals, registering with the Association, as well as breeders of commercial animals in South Africa and other countries, if requested;
- To render technical and advisory services to its members;
- To promote the export of animals, which have been registered or recorded with the Association and of semen, ova or embryos from animals registered or recorded in terms of this Constitution;
- To exercise the powers of an animal breeders' society in respect of those animals for which no such animal breeders' society exists;
- To delegate the powers mentioned above, to members who, to the satisfaction of Exco, have the necessary and suitable infrastructure, manpower and financial capabilities to perform such duties: Provided that such delegated powers shall be performed under the supervision of the Association; and
- To generally do all such acts as bodies corporate may by law deem necessary for the attainment of its objectives.

Conclusion

Key learnings from the SA Stud Book, applicable to the representative and regulatory functions required for the off-road strategy include:

- SA Stud Book was brought about as a result of legislation i.e. deemed to be a competent body to carry out a range of regulatory and other functions;
- SA Stud Book consists of industry representative organisations i.e. no individuals are members; and
- SA Stud Book does not have a representative function; all representation occurs at the individual association level.

9.3.3 ASA

Overview

The ASA is an independent body set up and paid for by the marketing and communication industry to ensure that its system of self-regulation works in the public interest. The ASA's president is someone independent from the industry.

The Code of Advertising Practice ("**the Code**") is the guiding document of the ASA. The Code is based upon the International Code of Advertising Practice, prepared by the International Chamber of Commerce. This is internationally accepted as the basis for domestic systems of self-regulation and forms the foundation of the Code. The Code is drawn up by the ASA with the participation of representatives from the marketing and communication industry and is amended from time to time to meet the changing needs both of the industry and of society.

All advertising on electronic broadcast media is subject to the Independent Broadcasting Authority Act 194 of 1993. In terms of this Act all electronic broadcasters must adhere to the ASA Code as determined and administered by the ASA.

ASA's members are required to adhere to the Code. There are 23 members (including associates) of the ASA, these being representative of the industry and various sectors.

The Code is supplemented by individual codes which are determined by the various member organisations or negotiated with governmental institutions. These individual codes are reflected in the Appendices to the Code. All such codes conform to the general principles laid down by this Code and differ only in detail where the individual needs are to be met.

The Code is administered by the Directorate and ASA Committees drawn from the constituent member bodies and, where applicable, consumer organisations. Powers are vested in the Directorate and ASA Committees. The interpretation of the Code is vested in the Directorate and ASA Committees.

The Code binds the advertiser, the advertising practitioner and the medium involved in publication of the advertiser's message to the public.

The ASA maintains close contact with government departments, consumer organisations, relevant NGOs and trade associations.

The Code has two main purposes, namely, to protect the consumer, and to ensure professionalism among advertisers. The Code lays down criteria for professional conduct, while at the same time informing the public of the self-imposed limitations accepted by those using or working in advertising. The Code forms the basis for arbitration where there is a conflict within the industry, or between advertisers and the general public.

The Code is designed to complement, rather than replace, legislation that exists to protect consumers from dishonest and fraudulent trading practices.

Conclusion

Key learnings from the ASA, applicable to the representative and regulatory functions required for the off-road strategy include:

- The ASA is set up and paid for by the industry;
- The ASA administers the Code of Advertising Practice which all advertising on electronic broadcast media must adhere to. This regulation is brought about by legislation, by which the ASA gets its regulatory powers. Regulation for other mediums is via self-regulation;
- The ASA works closely with government and other organisations;
- Members of the ASA are associations and other organisations representing the interests of various sectors and industries; and
- The intention of the ASA and the Code is to protect consumers and maintain professionalism in the industry.

9.3.4   BCCSA

Overview

The BCCSA as an independent judicial tribunal that adjudicates complaints made by the public against the broadcasters which are members of the National Association of Broadcasters ("**NAB**").

Section 2 of the Independent Broadcasting Authority Act No. 153 of 1993 charges the Independent Broadcasting Authority ("**the Authority**") with ensuring that broadcasting licensees adhere to a Code of Conduct acceptable to the Authority.

All licensees are required to ensure that all broadcasts comply with the BCCSA's Code of Conduct and are further required to satisfy the Authority that they have adequate procedures to fulfil this requirement.

The Authority is responsible for drafting the Code of Conduct and for monitoring compliance therewith. Under the Act, the Authority has the power to impose sanctions, including fines, on licensees who do not comply with this Code of Conduct.

Conclusion

Key learnings from the BCCSA, applicable to the representative and regulatory functions required for the off-road strategy include:

- The BCCSA administers a Code of Conduct which all broadcasting licencees must adhere to;
- The BCCSA gets its regulatory powers from the Independent Broadcasting Authority Act No. 153 of 1993;
- Under the Act, the BCCSA can impose sanctions, including fines, for non-compliance.

9.3.5   Conclusion

Key highlights from other regulatory bodies include:

- All four entities obtain their regulatory powers from legislation, which declares them to be competent authorities to carry out their various regulatory functions;
- With the exception of SARL, which performs representative and regulatory functions, the organisations investigated only carry out regulatory functions;
- Members of the entities are associations and other organisations representing various sectors, industries etc; and
- In the case of the BCCSA, sanctioning, including fines, of those in contravention with the law is included in legislation.

9.3   Accreditation and Grading

9.3.1   Introduction

In order to fully understand accreditation, certification and grading, lessons can be learnt from the processes and procedures of entities in other sectors.

The following entities in South Africa have developed systems of accreditation and /or grading:

- Tourism Grading Council of South Africa ("**TGCSA**");
- Fair Trade in Tourism South Africa ("**FTTSA**");
- Heritage Eco-Rating (Qualitour);
- Wine Industry Ethical Trade Association ("**WIETA**");
- Afrisco/Eco-Cert;
- South African National Accreditation System ("**SANAS**");
- Proudly South African;
- South African Bureau of Standards ("**SABS**"); and
- AA Travel.

Annexure H contains an overview of the following for the above-mentioned organisations:

- The rationale for the organisation;
- The nature of its systems, processes and procedures; and
- The management and accreditation of verification agents ("**VAs**").

9.3.2   Definitions

The following terms have been defined in **Table 9.1**:

- Accreditation;
- Certification;
- Verification; and
- Grading.

Table 9.1: Definition of Key Terms

Term	Definition
Accreditation	• Accreditation is defined the act of accrediting or the state of being accredited, especially the granting of approval to an institution by an official review board after the institution has met specific requirements. • Other definitions of accreditation include "to provide or send with credentials; designate officially", "to make authoritative, creditable, or reputable; sanction" or "to regard as true; believe".
Certification	• This is the procedure by which a certification body gives written assurance that the quality of a product and/or production process has been assessed and conforms to specified requirements. • Certification can act as a type of enforcement and an agent of change in areas where legislation has been slow to take up.

Verification	• Verification refers to a process that confirms, through the provision of evidence, that specified requirements have been fulfilled.
	• Certification schemes set out criteria that must be met in order for the applicant to be awarded the certificate. As these criteria differ considerably, the process for assessing compliance will also vary from one scheme to another.
	• There are generally three types or levels of verification, viz:
	  – **Self-assessment or First Party Verification** – The applicant fills in a form or submits a report to the certification body indicating their level of compliance. Self-assessment / first party verification encourages information sharing, and provides the applicant with a greater understanding of requirements and a sense of ownership of the process. However, verification based only on self-assessment is not very reliable.
	  – **Second Party Assessment** – Second party assessment involves employees of the certification/awarding body undertaking verification of applicants. This may engender problems around transparency and conflict of interest as the organization may be focused primarily on increasing its membership base. Second party assessment is especially problematic where membership is based on the awarding of a single certificate as opposed to a graded one.
	  – **Third Party Assessment** – Third party verification is undertaken independently of both the applicant or awarding body. It is frequently more expensive, however there is less

Term	Definition
	room for bias. Third party assessors may be independent consultants or agents from a company whose specific purpose is verification. Another form of third party assessment is when consumers complete assessment forms or surveys about the product or producer being assessed. • Generally speaking, third party assessment is viewed globally as the best approach to verification. Verification can be undertaken through a triangulation of methods such as a site visit, a desktop review of paper evidence and the measurement of impacts.
Grading	• A classification or standard based on size, quality etc. • Linked to consumer benefits i.e. a consumer can select something based on its grading e.g. a 4-star hotel above a 2-star hotel.

9.3.3   Advantages and Disadvantages of Accreditation and Grading

Perhaps one of the best-known accreditation and grading systems in South Africa, is the TGCSA, which was established in September 2000, by the Minister of Environmental Affairs and Tourism.

Its mandate is to provide a framework and process for grading across all relevant sectors of the tourism industry in South Africa. The TGCSA is representative of the entire tourism industry.

The TGCSA performs a vital role in ensuring that a standard of quality is achieved across all the services and facilities offered by the South African tourism industry.
This is made possible through the willing participation of the many establishments and facilities which choose to continuously improve and update the services they offer their customers. To ensure credibility and independence in measuring this grading system, a consumer feedback mechanism monitors the customers' expectations.

According to the TGCSA, this valuable and impartial tool guides the grading system, always ensuring that the best established practices are followed and where adjustments or improvements are required, the establishment concerned is advised accordingly.

Because the grading system is market driven and voluntary it stimulates improvement throughout all levels of service offering. This process continuously encourages the industry to re-invent, revalue and grow itself. In doing so it provides another key in the overall development and transformation of tourism in South Africa.

Benefits of being graded by the TGCSA include:

- **Market penetration** – Being graded by the TGCSA provides the facility with a credible brand or identity. Although large hotel groups are able to create a brand for themselves, most small facilities do not have the time or funding to do this. Being star-graded provides them with a credible brand. This includes:
  - Graded facilities have the right and are required to display the Grading Council plaque outside their premises and the certificate inside their premises to display their star rating and indicate that they meet or exceed the Grading Council's requirements;
  - Graded facilities may use the Grading Council logo (star) in all their marketing collateral; and
  - Grading assists organisations in positioning their products.
  - Grading is a constant quality control tool as customers can call the customer feedback centre on 0861 GRADED (0861 472 333), or fill in postage paid postcards available at graded establishments.

- **Marketing exposure** – This includes:
  - All graded establishments will be listed on the Tourism Grading Council website with the following details: name of facility, contact person, telephone and fax number, category, address, email address and web-site details with link to establishment's website for reservation purposes.
  - All graded facilities get a free listing in the annual TGCSA Guides and advertising is also available. The TGCSA Guides.
  - The Grading Council actively markets star grading directly to consumers, tour operators and travel agents.

- **Preferential use** – e.g.
  - South African Tourism endorses and uses star graded facilities ahead of non-graded facilities as listed on the official South African Tourism website www.southafrica.net.
  - All government departments are required to procure accommodation from graded facilities only.

One of the key downsides of accreditation and grading is the cost, both to set-up and manage.

9.4   BEE Charters in South Africa

One of the key tools developed by government for bringing about transformation in South Africa, are the Codes of Good Practice for Broad-Based Black Economic

Empowerment, gazetted in July 2007. This provides a legislated approach to transformation.

The Codes are binding on all organs of state and public entities, with regards to:

- Procurement;
- Licensing and concessions;
- Public private partnerships; and
- Sale of state assets.

The Codes set out several criteria against which organisations are scored. This score then determines at which level the organisations is, in terms of BEE-compliance.

Being verified according to the Codes is not mandatory, but organisations that wish to work for government need to be BEE-compliant and demonstrate defined levels of verification. Organisations that wish to be BEE-compliant will look for ways to do this e.g. procuring from other BEE-compliant organisations. Thus the Codes will impact on most organisations through the supply chain (e.g. by preferential procurement etc.).

Prior to the BEE Codes being gazetted, many sectors developed (and continue to develop) BEE charters, aimed at bringing about transformation in the sector concerned, and in South Africa in general. These charters were largely self-regulatory and encouraged organisations to focus their transformation efforts on a set of categories (e.g. ownership, procurement, employment etc.). However, the Codes that have been gazetted supercede any charters, unless the charters themselves are gazetted.

The government is thus, through legislation, trying to bring about transformation in the various sectors in South Africa.

9.5   Regulation of Pleasure Vessel Boating in South Africa

9.5.1   Introduction

Boating in South Africa takes place in:

- The "sea" i.e. coastal waters and tidal estuaries; and
- In-land waters e.g. dams and rivers.

Regulation of the boating sector in South Africa, is largely controlled by legislation, including:

- Registration / licensing of vessels;
- Licensing of skippers;
- Registration of dams; and
- Control of sea access.

9.5.2   Legislation and Licensing of Vessels and Skippers

Coastal Waters and Tidal Estuaries

A number of regulations apply to the use of pleasure vessels operating in coastal waters and tidal estuaries. These include:

- The Merchant Shipping (Small Vessel Safety) Regulations, 2002 (amended as of 1 June 2004);
- Ship Registration Act, 1998 (Act No. 58 of 1998);
- Ship Registration Regulations 2002;
- Marine Traffic Regulations; and
- Small vessel regulations.

The regulations apply to all pleasure vessels used solely for sport or recreation of 3 metres or more in overall length, which operate in coastal waters and tidal estuaries.

Anyone operating a boat, which is longer than 3 metres, is required to have a valid skipper's licence and the vessel must have a certificate of fitness or a safety certificate.

Regulations cover:

- **Vessel Registration** – Vessels are required to be registered (licensed) with an Authorised Agency, these being governing or national bodies, clubs or organisations. South African Sailing ("**SAS**") is one of four agencies approved by the South African Maritime Safety Authority ("**SAMSA**").

    The Regulations specify the minimum requirements, and Authorised Agencies may specify additional requirements appropriate to local operating conditions, and the type of operations the vessel will be undertaking.

    Registrations are valid for individuals as well as corporates and are valid until there is a change in ownership in which case the vessel must be re-registered.
    In order to apply for a registration certificate, one requires:

    – Proof of ownership, by way of a deed of sale document or a certified affidavit;

- Your identity document, or a certified copy thereof, or your passport;
- Your current club membership card; and
- The prescribed registration fee.

Your vessel will then be registered by SAS in your name in the National Register and you will be issued with a Registration Certificate. A certified copy thereof should be kept on board your vessel.

The insurance industry presents an indirect from of enforcement, as they are not allowed to insure a vessel without registration.

- **Certificates of Fitness (Safety Certificate)** – A vessel may not go to sea (leave moorings or anchorages) unless there is on board and in force, a valid Certificate of Fitness. An accredited surveyor or safety officer must carry out the initial survey, and the annual renewal survey. These officers are normally recommended by Clubs and appointed by an Authorized Agency on behalf of SAMSA.

  Certain ports also have additional requirements e.g. most National Ports Authority ports require vessels to obtain a harbour license that must be displayed on the vessel and is renewable annually.

- **Skippers Tickets** (Certificates of Competence) – In terms of the Small Vessels Safety Regulations, a person in command of a pleasure sailing vessel of 6 metres or more, or a power-driven pleasure vessel of 3 metres or more must hold a valid "Certificate of Competence" issued by an Authorised Agency or by SAMSA. There are three minimum valid certificates, viz:
  - Sailing Vessels – Day Skipper issued by SASA
  - Power Driven Vessels under 9 metres – Day Skipper's Ticket issued by SAMSA; and
  - Power Driven Vessels over 9 metres and up to 100 tons – Day Skipper's Ticket issued by SAS or any Authorised Agency approved for the purpose.

These skipper's tickets are for recreational and sporting purposes only, and may not be used for financial reward. Commercial tickets may only be issued by SAMSA.

A skipper's licence can be obtained through registered lecturers. The course is two days long and requires applicants to do a written exam. An applicant must obtain a pass rate of 80% or higher.

According to an official of SAMSA, failure to comply with the above regulations can result in a fine of up to R20 000 or one year's imprisonment.

The checking of skippers' licences is the responsibility of the Water Wing of the SAPS and members of SAMSA.

In-land Waters

Regulations for inland waters are currently in the development process and according to industry representatives "are causing stir". These regulations (i.e. Inland Water Regulations) have been drafted for all leisure small boat activities – fishing, diving, anyone active in water sports etc.

The irresponsible activities of the wider public (who are not members of an authorised club) have attracted attention and given rise to the drafting of the regulations.

Once gazetted, boat owners will be given a year to comply with the new legislation. The owners of power boats (three metres or longer) or yachts (in excess of six metres) must apply for a skipper's licence, irrespective of whether the boat is used for pleasure, sport or commercial purposes and irrespective of whether the boats are used on dams, lagoons, rivers or the sea.

The new legislation for in-land vessels was driven by DWAF and lobbied for by the private sector.

9.5.3   Registration of Dams

Dams need to be registered with DWAF if they wish to allow power boating activities on their waters. The dam authority needs to fill in an application for recreational use, which is dealt with by Section 21K under the Water Act. Once the application has been approved, then the dam authority can allow power boating on its shores. It should be noted that approval can take up to a year.

DWAF states it is important for the dam authority to state the water use because DWAF's mission is to manage water resources sustainably – water resource management is a key aspect of their mandate.

Dams can be privately owned, but as soon as the owners want to use these dams for commercial purposes, the dams need to be registered with DWAF.

9.5.4   Sea Access

There are several regulations that govern the use of pleasure vessels in the sea, including local area rulings e.g. the National Ports Authority requires pleasure vessels operating in areas for which they have responsibility to comply with additional requirements – e.g. the Port of Durban requires skippers leaving the port to have "port exemption". All ports hosting pleasure vessels require an annual levy that contributes to services such as radio services and mark maintenance.

In addition, pleasure vessels leaving South African territorial waters must comply with the Ship Registration Act that requires additional registration on the South African Register of Ships.

9.5.5   Conclusion

The use of pleasure vessels on coastal waters and tidal estuaries has been regulated, through legislation for many years, mainly to ensure the safety of the vessel and its skipper and other passengers. This is achieved through the compulsory:

- Registration of vessels;
- Requirement for a Certificate of Fitness / Safety Certificate; and
- Licensing of skippers.

Much like the current focus of the off-road sector, the irresponsible behaviour of some vessels owners and skippers on inland waters has resulted in the development of regulations to control the use of vessels on inland waters. This includes the same conditions as those indicated for pleasure vessels on coastal waters and tidal estuaries.

Thus, the inland water use by vessels is being regulated though legislation.

9.6   Regulation of Commercial Scuba Diving in South Africa

9.6.1   Background

Regulation of commercial scuba diving (i.e. scuba diving for pleasure) is achieved through a mixture of legislative and non-legislative measures. For example divers need to be accredited / certified (although this is not legislated), while diving in some coastal areas (i.e. protected marine areas) is regulated through legislation.

9.6.2   Diver Accreditation / Certification

The accreditation / certification of divers was brought about to ensure their safety.

A person that wishes to go scuba diving can only do so through a dive centre, and once they have been accredited / certified by a professional body / certification agency, e.g. Professional Association of Diving Instructors ("**PADI**"), NAUI Worldwide or Scuba Schools International. These organisations have affiliated dive centres located throughout the world.

The **PADI** System of diver education ensures that PADI professionals worldwide deliver PADI courses in a consistent and standardized manner, yet adapted to the unique needs and the requirements of the local diving environment.

There are than 130 000 PADI professionals and around 5 300 PADI dive centres and resorts operating in 180 countries and territories, including South Africa. There are two paths that a scuba diver can follow, viz:

- Open water Diver (entry level) to Master Scuba Diver; and
- Open water Diver to Course Director (training route).

See **Figure 9.1** for an overview of Padi's courses. There are also a variety of speciality diver courses.

Accreditation / certification of divers only happens after divers have undergone a training programme, and passed a written exam.
A certified scuba diver will be given a certification card as proof that they have taken and passed the course. No reputable Dive Centre will rent someone gear, fill their tank, or let them dive at their facilities unless they are a certified scuba diver. PADI requires someone to be at least 10 years old to become a PADI certified Junior Open Water Scuba Diver.   A Junior Open Water Scuba Diver must dive with an Open Water Scuba Diver until the junior turns 19. Most certifying agencies (e.g. PADI) however require students to be at least 12 years old.

Most scuba certifications do not expire, but it is highly recommended that you keep in practice and dive more than once a year. Scuba Tune Up or Refresher courses are available.

PADI provides every diver with a log-book, which needs to be completed by the diver. This assists in keeping track of the dives being done and assists the owners of dive centres to judge the experience level of a diver.

Dive centres usually only allow people with a valid certificate obtained from registered organisations to dive. Owners of diving centres thus unofficially police diving activities. This is in their best interest to avoid accidents as a result of an inexperienced diver. There is currently no registration or licensing of dive centres.

A diving group is not allowed to enter the water without a dive master, who also acts as a guide. In addition, to avoid accidents, every diver has to buddy up with a fellow diver. These divers must look out for one another and communicate to each other while under water.

9.6.3   Regulation of Coastal Areas

The regulation of coastal areas falls under the Protected Area Act of 2004.

Dive centres in South Africa provide diving opportunities in coastal waters around the South African shore.

Reefs are usually the focus of dives. However, for reefs situated in a marine protected area, a diver permit is required. A permit can be obtained from the post office and costs R75 per diver per year. Foreign divers, which are usually in the country for less than a year, can obtain a permit for R45, which is valid for a specified number of months. The distribution of permits is managed by the Provincial Parks Boards of the respective provinces.

Figure 9.1: PADI Courses
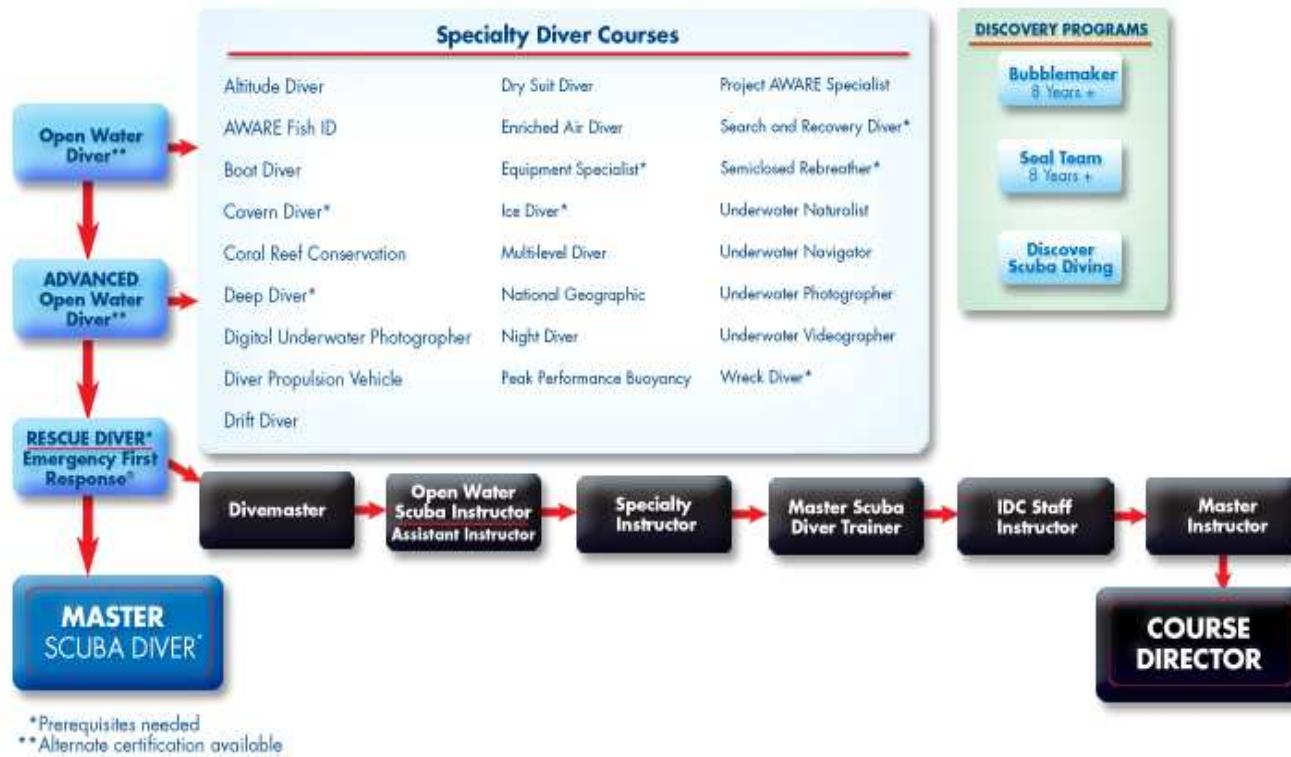
Dive sites are not officially graded. Dive centres can advise a person on the dive location specific to their requirements.

In addition, some dive sites may require a more qualified diver than other sites. Once again, this is informally managed by the dive centres.

9.6.4   Conclusion

Scuba diving in South Africa is largely regulated without legislation.

Commercial scuba divers in South Africa are required to be certified before they can dive. This qualification is linked to a training programme, and proof of competency i.e. a diver will not be issued with a certificate if he/she is unable to complete specified requirements. Thus, this is a good example of self-regulation i.e. control without legislation. Legislation is not always required to regulate an industry.

Legislation is however in place for divers who wish to dive in reefs which fall into marine protected areas. However, there are no environmental or other requirements to obtain permits to dive in these areas and the year-long validity indicates no capacity control element to permit licensing.

9.7   Regulation of Go-Karting in South Africa

9.7.1   Introduction

Go-karting and other forms of motorsport in South Africa are regulated through the licensing of drivers and race-tracks. This is mostly to ensure safety in the sport.

9.7.2   Regulation

Governing bodies are in place to ensure that motorsport is practiced in a responsible way and that the sport is controlled and administrated properly.

Motorsport South Africa ("**MSA**") is the sole governing body of all forms of motorsport (i.e. cars, go-karting and motorcycles) in South Africa.

Motorsport is controlled worldwide by two governing bodies, viz:

- Federation Internationale de l'Automobile ("**FIA**") – Responsible for all forms of automobile sport; and
- Federation Internationale de Motocyclisme ("**FIM**"), responsible for all categories of motorcycling.

The Commission Internationale de Karting ("**CIK**"), forms part of the FIA.

Both the FIA and FIM recognise only one National Federation in each country, with such a federation in turn being responsible for the control and administration of the sport in its own country. In South Africa, the FIA and FIM have transferred their sporting powers to MSA and all motorsporting events in the country are held in accordance with FIA and FIM Sporting Codes.

South Africa is one of only a few countries with one body responsible for the control of both car and motorcycle sporting events, with most other countries having separate governing bodies for the two disciplines.

Apart from being a full member of both the FIA and FIM, MSA is also affiliated to the South African Sports Confederation and Olympic Committee ("**SASCOC**").

9.7.3   Licensing of Go-Karts Drivers

In general go-kart drivers do not need a licence to drive a go-kart when it is their private go-kart and when they drive on private land. A go-kart driver only needs a licence when he/she wants to compete.

To obtain a licence the driver needs to be affiliated to a motorsport club.

To register with a motor club / become a member and to obtain a race licence, the driver needs a medical certificate stamped from a registered medical practitioner stating that the individual is in good health and fit to compete in motorsport and that he/she does not suffer from a weak heart, diabetes, fainting spells and/or any other ailment or disorders which could adversely affect his/her ability to compete.

A licence is then obtained from MSA, valid for the type of the sport the driver wishes to compete in. When applying for a licence the driver needs to produce a club association membership card or proof of having paid club fees. A driver can register a national, regional or club licence, which relates to the level of events he /she can take place in. MSA has arranged a medical/accident insurance cover for competitors at an extremely low annual premium, which cover is compulsory and all applicants are therefore required

to pay the premium when applying for a licence, irrespective of the category of sport they wish to compete in.

When obtaining a licence, the competitor is issued with a copy of the MSA Handbook and a copy of the technical and sporting regulations applicable to the facet of the sport he/she chooses to compete in. The General Section of the Handbook contains the General Competition Rules.

9.7.4   Licensing of Race-Tracks

A race-track, in order to host different competitions, needs to be affiliated with MSA. The owner of a race-track needs to purchase a track license which is valid for 1 year. A track license includes a safety inspection. A track can be registered for club events, regional events, national events or international events.

The same rules apply in each province.

9.7.5   Conclusion

Go-karting, and other forms of motorsport in South Africa, are controlled through the licencing of drivers and race-tracks which is a self-regulatory system.

In the case of driver licensing, motorsport clubs play a pivotal role, as drivers have to be members of a club, in order to obtain a licence. Membership requires only proof of health and not of competency, and rules are conveyed in documented form, with no specific training or signing of a code.

9.8   Regulation of Hiking in South Africa

9.8.1   Introduction

The chairperson of the Southern African Hiking trails Ownership Association ("**SAHTOA**") Wouter Schreuders, indicates that, at this stage, the hiking industry regulates itself – i.e. self regulatory.

Although there are codes of conduct in place for hikers and trails, nothing is legally enforced.

SAHTOA is a non-profit organization established to represent hiking trail owners and all related interested and affected role-players. Its focus is to promote a healthy sustainable dynamic and growing hiking industry in southern Africa.

9.8.2   Regulation of Hiking Trails

SAHTOA's priorities are as follows:

- To bring together all sectors of, and stakeholders in, the southern African hiking industry to the benefit of all parties concerned and with the final aim of establishing a uniformly focused hiking industry as part of the tourism industry in southern Africa;
- To establish and maintain internationally accepted norms and standards in respect of trails and related facilities;
- To promote environmental sustainability and financial viability in the industry;
- To expand hiking to all groups and levels of society;
- To respond effectively to a dynamic hiking environment through surveys and research; and
- To promote hiking locally in southern Africa and abroad.

The quality of a hiking experience is normally determined by intangible aspects, such as:

- Ability of hikers;
- Personal fitness;
- Weather conditions,
- Scenic beauty; and
- Wilderness atmosphere, etc.

The quality of hiking trails is determined by the type of the environment, however, the enjoyment of the environment is very subjective. Thus seen in this context, no trail can be labelled "better than" any other and the concept of an enjoyable trail becomes subjective.

Thus for a hiker to enjoy a hike, he or she needs to be able to choose the exact type of experience desired. Accreditation thus does not ensure a "good" trail but an authentic experience according to the expectations that have been created. A hiking trail can thus only be accredited on the basis of being a true reflection of the experience promised (in the brochure and map). This implies, however, that there also need to be at least some basic facilities such as a clearly marked path, a map, water and a place to cook and sleep as well as basic safety measures in order to provide this experience.

Trails are accredited through the "Green Flag Trails" system.

There are 4 criteria used to accredit a trail, viz:

- Accommodation facilities (whether the huts are luxury, standard or rustic);
- Environmental character (whether it is a rural, natural, or pristine area);
- Difficulty grading (ranging from very easy to very difficult); and
- Trail/path facilities (such as quality of trail map, safety aspects, etc)

Each of these is discussed in further detail below.

Accommodation Facilities

Accommodation facilities are graded by type i.e. rustic, standard and luxury. The following minimum requirements apply for the three types.

Table 9.2: Minimum Requirements for Accommodation Facilities Grading

RUSTIC
• Shelter for sleeping or tent site only
• Pit toilet (one / 10 people)
• Potable water nearby (100 m maximum), easily accessible
• Braai area with grate only [if fires are permitted] (one / 10 people)
• Logs for firewood provided - with axe/saw
• Garbage disposal - pit on site
• Washing in stream (with notice concerning prohibition of using soap in stream) or cold shower only

STANDARD
• Hut - basic, weather proof or tents provided
• Toilet - separate building: flush toilet or alternate. modern system (one / 10 people)
• Clean drinking water on site
• Braai area with grate under cover (one / 10 people)
• Chopped firewood provided - enough for braai only
• Basic washing facility (hot shower by means of "donkey")
• Seating (without backrest, logs, benches, etc.)
• Bunk beds

- Mattresses (Thin <10 cm)
- Garbage disposal: bin outside only
- At least one candle holder or paraffin lamp per room
- Dish washing basin/basic cooking place (with table) near or next to hut
- Cast iron pot or similar
- Clothes hooks
- Kettle
- Floor surface: cement
- Washing line

LUXURY

- Good quality hut, luxury tent or house with several separate rooms
- Flush toilet in hut (one / six people)
- Clean drinking water in hut
- Braai - under cover with windshield or lapa (one / 10 people)
- Braai utensils
- Chopped firewood provided - also for campfire
- Chairs / seats with backrests inside house
- Single / double beds (not bunk beds)
- Thick (10cm) high density foam or spring mattresses
- Shower and/or bath (geyser or "donkey", lit by camp attendant)
- Separate "kitchen" inside hut with basin and tap
- Garbage disposal bin in accommodation unit
- Electric / gas / solar lighting
- Cast iron pot plus other pots & pans
- Cupboard and / or shelves
- Electric kettle
- Mirror/s
- Interior heating or coal / wood stove in house (if applicable in cold climate)
- Floor surface (novilon, tiles, carpets, wood)
- Stove / hot plate
- Fridge / cooler
- Cutlery and crockery
- Sheet/s

Environmental Character

The environmental character of an area is graded by type i.e. rural, natural and pristine.

The following minimum requirements apply for the three types.

Table 9.3: Minimum Requirements for Environmental Character Grading

RURAL

Human (cultural) features
- Probable contact with local inhabitants
- Frequent noise pollution
- Crossing of main roads acceptable
- Hiking on forestry / farm / as well as district roads acceptable
- Pollution (littering, air, water), erosion prevalent
- Perception of industries and towns as well as agriculture and roads (trail passes through agricultural fields)
- Power / telephone lines / fences close by (1km) or frequently (>twice)

Vegetation
- Agricultural lands, plantations and widespread alien flora occur / recently cleared of exotics

Water
- Cement dams acceptable
- Beverages available en route (e.g. shop)
- No natural swimming places: cement dams acceptable
- No natural drinking water en route

Animals
- Farm animals / alien fauna (indigenous species exceptional)
- Domesticated animals (e.g. dogs acceptable)

NATURAL

Human (cultural) features
- Possible but unlikely contact with local inhabitants
- Limited agriculture within 2 km
- Intermittent extraneous sounds/ noise (max. twice)
- Crossings of district roads acceptable
- Hiking on forestry/farm roads for some distance (max. 25% of total distance)
- Some erosion acceptable in landscape
- Limited perception of distant industries, towns and roads
- Power / telephone lines / fences visible (max. twice)

Vegetation
- Widespread alien flora

Water
- Earth dams acceptable
- Swimming: earth dams
- Natural drinking water: seasonal only

Animals/birds
- Alien fauna acceptable
- Farm animals acceptable

• Indigenous species occur
PRISTINE

Human (cultural) features
- No contact with local people (non-hikers)
- No industries, towns or roads within 2 km (historical sites acceptable)
- Only sounds of nature
- Pollution/human induced soil erosion not prevalent
- Little use made of forestry/farm roads (at most1km) near beginning and/or end of trail
- No power/telephone lines or fences visible within 2 km
- No agriculture visible within 2 km
- No crossing of public roads except at start & end

Vegetation
- No alien plant invasion or small patches only (guideline: no more than 10 isolated species and/or 3 patches of 1 ha each)

Water
- Only naturally occurring water (springs, rivers, lakes, sea)
- Natural swimming places
- Natural drinking water: whole year

Animals
- No farm or domesticated animals nor other alien fauna

Difficulty Grading

Trail difficulty is graded according to 10 categories, each of which is based on the energy required for the trail.

Table 9.4: Trail Difficulty Grading

Category	Description	Average Daily Energy Needed (KCal)
1	Very easy	< 375
2	Easy	375 - 750
3	Easy to moderate	750 - 1 125
4	Moderate	1 125 - 1 500
5	Moderate to difficult	1 500 - 1 875
6	Difficult	1 875 - 2 250
7	Difficult to very difficult	2 250 - 2 625
8	Very difficult and strenuous	2 625 - 3 000
9	Extremely strenuous	3 000 - 3 375
10	Above normally acceptable limits	> 3 375

Trail / Path Facilities

Trail / path facilities are graded, out of 10, against 3 requirements, each of which has a different weighting, viz:

1. **BASIC NECESSITIES (weighting = 5)**
   - Clear map according to scale & bearing;
   - Basic environmental information;
   - Foot prints or other effective trail markers;
   - Dangerous places marked (if applicable);
   - Safe and effective river crossings / stiles or escape routes;
   - Booking / information facilities (if applicable);
   - Clear road indications / signs to start of hike;
   - Track accessible for normal cars to start of hike; and
   - Security: Relative safe parking from public areas and veld fires - max. 1 km from the start.

2. **ADDITIONAL REQUIREMENTS (accumulative weighting = 3)**
   - Standard brochure with information on each day;
   - Good quality mono colour map, with contour lines; drinking water marked;
   - Distance indication on trail or on map;
   - Access road to start of trail: graded gravel;
   - Parking: shade trees;
   - Either shuttle service for open ended trails; or circular; or network;

– Information signs indicating scenic places, lunch spots, swimming, etc;
– Basic medical aid or emergency contact information at start and end of trail;
– Telephone at start OR end of trail OR partial cellphone reception;
– Environmental education information en route or at huts; and
– Drinking water en route (every day; rainy season).

3. **DESIRABLE FACILITIES (accumulative weighting = 2)**
   – Colour map with contours and additional information;
   – Telephone at start AND end (emergency only) OR cellphone reception;
   – Good quality brochure with comprehensive information for environmental education;
   – Reception at site office or nearby;
   – Access road: tarred;
   – Parking: Garage or undercover parking;
   – Security guard / lock-up garage / fenced enclosure;
   – Drinking water en route (every day; all seasons); and
   – Fire extinguisher at huts.

Accreditation is linked to ongoing maintenance. A trail manager who chooses to go the way of accreditation acknowledges the need to keep the trail in good shape in order for it to be safe, environmentally sound and user friendly.

9.8.3   Conclusion

The use of hiking trails in South Africa does not appear to be regulated through legislation. However, a framework of self-regulation has been developed, based on a grading system.

This system is entirely aimed at informing the user of the nature and type of trail, not at ensuring the trail itself, or the trail users, are not damaging the environment, or are competent hikers.

9.9   Regulation of Liquor Licensing in South Africa

9.9.1   Introduction

Liquor licensing is regulated entirely through legislation.

9.9.2   Legislation – The National Liquor Act

The Liquor Act 59 of 2003 came into effect on the 13th August 2004.

Before its proclamation, provincial Liquor Authorities were responsible for the regulation of all the value chain categories (i.e. manufacturing, retailing etc.) of the liquor industry.

The 2004 Act provides for the manufacturing and distribution of liquor to be regulated at national level while micro manufacturing and retailing continue to be regulated at provincial level.

There are two main reasons for the Liquor Act, viz:

- Reduce the socio-economic and other costs of alcohol abuse in South Africa by:
  - Setting essential national norms and standards in the liquor industry;
  - Regulating the manufacture and wholesale distribution of liquor;
  - Setting essential national norms and standards for regulation of the retail sale and micro-manufacture of liquor; and
  - Providing for public participation in the consideration of applications.

- Promote the development of a responsible and sustainable liquor industry in a manner that facilitates:
  - Entry of new participants into the liquor industry;
  - Diversity of ownership in the industry; and
  - An ethos of social responsibility in the industry.

A new National Liquor Authority ("**NLA**"), housed in the Consumer and Corporate Regulation Division of the Department of Trade and Industry ("**DTI**"), is responsible for administration of the Act. The NLA will receive, evaluate and recommend to the Minister applications for national manufacturing and distribution licenses and related matters.

A National Liquor Policy Council, comprising the Minister of Trade and Industry and relevant MECs of the provinces, will formulate and co-ordinate policies and embody co-operative governance.

An important aspect of the new Act is social responsibility. Those wishing to register must set out their commitment to BEE, and their proposed contribution to combating alcohol abuse, as well as how they will restrict or promote job creation, diversity of ownership, exports, competition, new entrants to the industry and efficiency of operation. Failing to meet these commitments can result in a review of or placing new conditions on registration.

The liquor Act 59 of 2003 repeals the 1989 Act only in those provinces that have promulgated provincial liquor legislation (i.e. currently Eastern Cape and Gauteng). The Liquor Act of 1989 remains in force in provinces that have not promulgated liquor legislation. As from 13 August 2004, provincial liquor authorities can no longer regulate activities of distributors and manufacturers whose liquor volumes meet or exceed the set thresholds. Applications received by provincial liquor authorities before this new Act must be disposed of in terms of the 1989 Liquor Act.

The legislation applies to the manufacturing or distribution of liquor and methylated spirits, as well as to the regulation of imputable (undrinkable) substances.

The Minister may designate persons as inspectors to exercise powers in terms of this Act, and will issue certificate stating that such persons are inspectors. Inspectors may investigate complaints submitted to them in the prescribed manner and form.

The NLA's Education Unit can assist parties with non-binding clarifications and advisory opinions free of charge.

9.9.3   Licensing of Retailers

The Liquor Act deals with the regulation of retail outlets at a provincial level. The Liquor Act of 1989 was amended during October 1995 to make provision for the establishment of nine provincial liquor boards.

The processing of applications for licences is handled in line with the above Act as well as the applicable regulations.

There are several different licences, viz:

- Hotel;
- Restaurant;
- Theatre;
- Club;
- Night club;
- Sports grounds;
- Pub;
- Dance hall;
- Tavern;
- Pool club;
- Liquor store;
- Grocers' wine licence;

- Micro manufacturer;
- Sorghum beer licence; and
- Catering or occasional permits.

Different licences have different requirements.

It is illegal to sell alcohol without the correct liquor licence.

9.9.4   Conclusion

Liquor licensing is regulated entirely through legislation, both at a national and provincial level.

In terms of retail operations, licences are granted to an organisation / retail outlet and not a person.

9.10   Conclusion

Table 9.5 provides a comparison of the regulation of the off-road sector in South Africa, with the benchmarked sectors included above.

Some sectors in South Africa are regulated entirely though legislation (e.g. pleasure boating, liquor licensing and amateur radio licensing), while others are controlled through self-regulation (e.g. hiking trails and motorsport). Others use a mixture of legislation and self-regulation (e.g. scuba diving).

Regulation is largely achieved through licensing and registration, which can occur on 3 levels, viz:

- The user (e.g. vehicle driver, scuba diver, boat skipper etc.);
- The object being used (e.g. boat etc.); and
- The place / location where activities occur (e.g. sea, dam, reef etc.).

Table 9.5: Regulation of Various Sectors in South Africa

Sector in South Africa	Type of Regulation	User Licensing	User Competency	Site Registration	Site Grading	"Vehicle" Registration and Licensing	Guide Registration
Off-road	• No legislation specific to the off-road sector	• No licensing of drivers operating ORVs off-road	• None	• None	• None	• Legislated registration of ORVs	• Legislated registration of giudes
Amateur Radio Licensing	• Largely legislated	• Legislated – linked to passing an exam	• Legislated – Radio Amateur's Examination	• n/a	• Not found	• n/a	• Not found
Pleasure Vessel Boating	• Largely legislated	• Legislated – obtaining a skipper's ticket is dependent on proof of competency (i.e. Certificate of Competency must be obtained)	• Legislated – skippers must be trained in safety and vessel operation	• Legislated – dams and rivers have to be registered with DWAF	• Not found	• Legislated – vessels have to be licensed to the owner and must obtain a Safety Certificate / Certificate of Fitness	• Not found

Sector in South Africa	Type of Regulation	User Licensing	User Competency	Site Registration	Site Grading	"Vehicle" Registration and Licensing	Guide Registration
Commercial Scuba Diving	• Mixture legislation and self-regulation	• Self-regulated – obtaining a diver's licence is dependent on training and passing a written exam • Legislated – Diver permit required for marine protected areas – easily obtained for a fee with no environ-mental code or conduct required	• Self-regulated – divers must be trained in safety and operation with some environ-mental included	• Dive sites not registered	• Not found	• n/a	• Self-regulated – Dive guides (instructors) under special training and need to be registered as such

Sector in South Africa	Type of Regulation	User Licensing	User Competency	Site Registration	Site Grading	"Vehicle" Registration and Licensing	Guide Registration
Motorsport	• Self-regulated	• Self-regulation – drivers licensed – driver must belong to a motorsport club and have certified proof of good health	• None – only proof of health is required	• Self-regulation – race-tracks need to be licensed	• Not found	• No licensing	• Not found
Hiking	• Self-regulation	• No licensing of hikers	• No hiker competency required	• No registration of hiking trails	• Self-regulation – grading of hiking trails occurs	• n/a	• Not found
Liquor Licensing	• Largely legislated	• No licensing	• n/a	• Legislated – retail outlets have to be licensed	• Not found	• n/a	• n/a

Some key take-home points are listed below, viz:

- User competency is controlled for scuba diving (self-regulation), and boat skippers (legislated), mainly from a safety objective and not environmental objectives. Radio users' competency is controlled also for safety and general competency;

- Sites have to be registered for pleasure boating and liquor sales (legislated) and for motor racing (self-regulation). From a pleasure boating perspective, DWAF may take environmental factors into account when allowing registration, but for liquor licensing and motor racing and many aspects of pleasure boating, site regulation and control is mainly for safety / health;

- Only in the arena of diving, are guides / instructors required to undergo certain training and be certified, and the main objective behind this appears to be safety;

- Most of the bodies (i.e. those investigated) responsible for regulation obtain their regulatory powers from legislation, which declares them to be competent authorities to carry out their various regulatory functions. Most of these bodies only carry out regulatory functions.