

(30 September 2016 - to date)

## **LIQUOR ACT 59 OF 2003**

*(Gazette No.26294, Notice No. 539 dated 26 April 2004. Commencement date: 13 August 2004 [Proc.No.43, Gazette No. 26673])*

## **FINAL NATIONAL LIQUOR POLICY, 2016**

*Government Notice 1208 in Government Gazette 40321 dated 30 September 2016. Commencement date: 30 September 2016*

### **THE FINAL NATIONAL LIQUOR POLICY IS HEREBY PUBLISHED FOR PUBLIC INFORMATION**

I, Dr Rob Davies, the Minister of Trade and Industry, having obtained Cabinet approval, hereby publish the final National Liquor Policy for public information.

(Signed)

**Dr Rob Davies (MP)**

**Minister of Trade and Industry**

29 September 2016

## **NATIONAL LIQUOR POLICY REVIEW**

**August 2016**

### **LIST OF ACRONYMS**

|        |  |
|--------|--|
| B-BBEE | Broad- Based Black Economic Empowerment                  |
| DAFF   | Department of Agriculture, Forestry and Fisheries        |
| FAS    | Foetal Alcohol Syndrome                                  |
| Health | Department of Health                                     |
| IMC    | Inter-Ministerial Committee on Combating Substance Abuse |
| MEC    | Member of the Executive Council                          |
| MLDA   | Minimum Legal Drinking Age                               |
| MRC    | Medical Research Council                                 |
| NLA    | National Liquor Authority                                |
| NLPC   | National Liquor Policy Council                           |
| NLR    | National Liquor Regulator                                |
| NYDA   | National Youth Development Agency                        |

Prepared by:

|         |                                  |
|---------|----------------------------------|
| PFMA    | Public Finance Management Act    |
| SAPS    | South African Police Service     |
| SARS    | South African Revenue Service    |
| the dti | Department of Trade and Industry |
| WHO     | World Health Organisation        |

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### 1. EXECUTIVE SUMMARY

- 1.1 This document outlines the policy recommendations intended to amend the Liquor Act, 59 of 2003 ("the Act"). The liquor industry has been characterised by disparities informed by the historical legacies of South Africa. The disparities also created a large informal liquor segment whereby many unlicensed liquor outlets operated and continue to operate to date. The results of the apartheid liquor policy were countless raids, harassment, arrests, prosecutions and imprisonment of African people. Also, it led to social breakdown, family violence, alcohol related diseases, crime and accidents in poor communities. A large illegal liquor trade mushroomed in the townships.
- 1.2 The 1997 policy consideration was centred around restructuring the liquor industry and giving priority to facilitation of entry and empowerment of new entrants and to better reflect on all social and economic costs associated with liquor abuse. The said policy considerations remain a critical challenge today and to a great extent remain the focus for this review.
- 1.3 The current policy review also looks at the developments and trends in the industry since the inception of the new legislation and attempts to assess the progress to date, and makes recommendations in respect of areas that require more strengthening.
- 1.4 The challenges identified include but not limited to: the socio-economic impact of liquor; the slow pace of transformation; standardisation of key aspects of regulation and improved regulatory collaboration; eradicating the manufacturing and trading in illegal or illicit alcohol; as well as challenges with regards to regulatory capacity within the National Liquor Authority ("NLA").
- 1.5 The challenges identified were a result of a combination between the manner in which the liquor industry conducts itself, societal behaviour towards liquor and a possible lax on the current

liquor regulatory framework to address the challenges of alcohol abuse. Specific actions were identified for implementation and these include the review of the organisational structure of the NLA to provide for appropriate capacity for liquor registration, enforcement and education and awareness.

- 1.6 There were, however, challenges that were a direct result of the gaps in the legislative framework that necessitated a focused review. The following are recommendations:
- 1.6.1 Section 9 (advertising restrictions) of the Act should be amended to empower the Minister of Trade and Industry to determine more restrictions and parameters for advertising and marketing of liquor products, for example, all broadcast television channels should advertise at night, from 22:00- 06:00; remove content appealing to youth in alcohol advertising such as using of sport stars, models, etc.; branding of liquor premises and delivery trucks and/ or cars should be prohibited; and counter- advertisement which identifies the harmful effects of liquor abuse, for example, car crashes and victims, ailments caused by liquor, family violence and other social ills. Various departments must develop programmes in this regard. The restrictions will be determined in the regulations as prescribed by the Minister. This should also be reflected in provincial and municipal laws.
- 1.6.2 To address the socio-economic impact of alcohol abuse in the society, it is significant to amongst others, strengthen the registration conditions. Consequently, section 13 of the Liquor Act should be amended to provide Minister with powers to issue regulations and guidelines on combatting alcohol abuse and to monitor compliance thereof.
- 1.6.3 Liability for manufacturers and suppliers should be introduced to ensure that they take responsibility not to supply their products to unlicensed traders. Where liquor is supplied to illegal traders, the trader's involved and suppliers should be held responsible if harm or damage ensues to the patrons within or near to the premises where such illegal liquor was being traded; and where liquor has been supplied to illegal traders and the manufacturer did not take reasonable step [sic] to stop that supply, the manufacturer should also be held liable when harm or damage ensues.
- 1.6.4 In respect to retailers, in line with the agreed norms and standards, traders should not serve liquor products to already intoxicated persons. The following are common signs of visible intoxication, Slurred speech; move in a swaying manner or difficulty walking straight; becoming physically violent; and becoming loud, boisterous and disorderly. Should that happen and the intoxicated person is involved in a motor accidents [sic] or crime related to substance abuse, the trader should bear liability for any harm or damages within or near to premise. The burden of proof will shift from state to the respondent or manufacturer, supplier or trader who is trading contrary to the rules and regulations.

- 1.6.5 To reduce the harmful use of alcohol, it is also important to regulate the availability of liquor. One of the strategies to reduce the availability of liquor includes the need to regulate days and hours when liquor sales should be permitted. Liquor authorities and municipalities need to control access to liquor by restricting times for sales of liquor. This should be done by setting norms and standards around trading hours. The set uniform trading hours within the norms and standards should be integrated in national, provincial and municipal legislation.
- 1.6.6 Further, the national minimum legal age at which alcohol can be purchased and consumed should be raised from eighteen (18) to twenty one (21) years. This is aimed at delaying the introduction of liquor consumption by youths. Research shows that teenage drinking is on the increase and that the younger people start drinking, the more likely that they will experience problems from heavy drinking at a later stage. It is stated that adolescence is a period when [sic] teenage brain undergoes important developments. This period of brain development continues until most people reaches the age of 25. Consequently, exposing adolescent brain to alcohol during this period may impair neurological development causing youth to make irresponsible decisions, encounter memory lapse, or process and send neural impulses more slowly. It is therefore imperative that the introduction to liquor consumption is delayed as much as possible. Both government authorities and private sector associated with liquor ills should aggressively embark on programmes that communicate to the public the ills associated with liquor abuse.
- 1.6.7 Furthermore, to regulate accessibility of alcohol at public events or any liquor outlet, the licensees, manager or any other person dispensing liquor at the premises must take steps to ensure verification of the age of any person who appears to be under the age of 21 by requesting an identity document, passport or driver's license in order to verify the person's age before any liquor may be sold or supplied to them. It should be an offence therefore for such persons to sell liquor to persons under the age of 21 and for persons under the age of 21 to provide false evidence of their age in order to access liquor or enter a liquor premise. Contravening the age limit rule should also attract strict liability and is a criminal offence. Public events in this regard include schools activities, special occasions at stadia, corporate events etc.
- 1.6.8 In order to standardise licensing requirements, liquor premises should be located at least five hundred meters (500m) away from schools, places for worship; recreation facilities, rehabilitation or treatment centres, residential areas and public institutions. Further, no liquor licences shall be issued to petrol service stations; premises attached to petrol service stations; premises near public transport; and areas not classified for entertainment or zoned by municipalities for purposes of trading in liquor. Premises already licensed within the 500m radius and premises within high density locations will have to comply with the Norms and Standards issued from time to time providing for amongst others, the issue of trading hours, noise, nuisance and pollution. In this regard, licensing authorities with their discretion may

impose tighter trading conditions that trading hours of the outlets should not coincide with lessons during school hours.

- 1.6.9 Consequently, non-compliant [*sic*] in existing liquor premises may result in a hefty penalties, suspension and/ or revocation of the registration or licence. However, there should be aggressive communication (corporate leniency for a period of a year) by all tiers of government on this issue. These transitional measures should be applied in all tiers of government.
- 1.6.10 Research found that there is an association between alcohol availability, rates of alcohol consumption, and drinking-related problems. Investigations in the United States have found strong relationships between alcohol outlet density and adverse outcomes such as alcohol-related hospital admissions, child abuse and neglect, motor vehicle accidents, pedestrian injuries, drunk driving and a range of mortality outcomes (Donnelly et al.2006 in Bowers et al). It is stated that increases in alcohol availability contribute to increases in alcohol consumption, which contribute to increased alcohol- related problems. Therefore, regulating the density of alcohol outlets is an effort to minimise excessive alcohol consumption and related harms. Alcoholic beverage outlet density in this regard refers to the number of physical locations in which alcoholic beverages are available for purchase either per area or population. Outlet density may be regulated through licensing and zoning regulations. In this regard, licensing authorities need to ensure that there are stricter licensing requirements, and work in collaboration with municipalities, traditional authorities and town planners in terms of zoning. Further, premises within high density locations will have to comply with the Norms and Standards issued from time to time providing for amongst others, the issue of trading hours, noise, nuisance and pollution.
- 1.6.11 In order to enhance the impact, there is a need to intensify education and awareness. Education and awareness must therefore be included in the Act as part of the functions of the National Liquor Regulator (NLR) and Department of Trade and Industry ("the dti"), and NLR to be adequately capacitated to perform this function. There is a need for a general education and public awareness programmes among all levels of society about the dangers or harmful effects of alcohol abuse. Consumers need to be educated about the harmful effects of alcohol abuse by way of electronic and print media, schools, public health facilities, and community organisations. This will ensure that the community is empowered to take control over their lives. Further, licence holders (manufacturers, distributors and retailers) need to be constantly educated on the Liquor legislation in order to comply and avoid irresponsible trading. There is a need for cooperation with all tiers of government to intensify education and awareness. The codes, strategies and programmes addressing the issue of effective communication of the harmful effects of alcohol abuse with the public will be determined in the regulations to be prescribed by the Minister.
- 1.6.12 Further, research shows that pricing policies can be used to reduce underage drinking, to halt progression towards drinking large volumes of alcohol and or episodes of heavy drinking and to

influence consumers' preferences. Increasing the price of alcoholic beverages is therefore one of the most effective interventions to reduce harmful use of alcohol (WHO: 2010). This should be done through effective and efficient system for taxation together with adequate tax collection and enforcement. The National Treasury must maintain a reasonable and appropriate excise tax burden on alcoholic beverages. There might be scope to further increase the excise duties on alcohol beverages.

- 1.6.13 Furthermore, driving under the influence of alcohol affects a person's judgement, coordination and other motor functions. According to WHO (2014) establishment of maximum limits for drivers and the enforcement of drink-driving policies and sobriety checkpoints and random breath testing is a cost effective strategy, and can reduce traffic crashes by roughly 20%. The Department of Transport should therefore ensure that this strategy is properly enforced. All law enforcement agencies relating to liquor from all tiers of government should be involved.
- 1.6.14 In order to provide speedy redress, an internal review mechanism should be introduced to deal with aggrieved applicants. If the applicant is still aggrieved after this process, they may approach the courts for relief, but as a last resort. This will also reduce the costs of litigation for applicants and the dti's costs in defending such legal actions.
- 1.6.15 To address the issue of transformation, the NLR must be empowered to ensure that licensing conditions as articulated in the Broad- Based Black Economic Empowerment (B-BBEE) Codes of Good Practice are imposed and strictly monitored. Non-compliance to the B-BBEE Codes should result in the suspension or revocation of the license. The level of B-BBEE in the license requirements will be determined in the regulations to be prescribed by the Minister, for example, applicants for manufacturing and distribution licenses must demonstrate a category four B-BBEE compliance level. Provinces should within their legislative mandate also align licensing condition to address transformation matters where necessary.
- 1.6.16 Harmonisation of the provincial liquor legislations with the Act and subsequent repeal of the Liquor Act, 1989 ("1989 Act") should be encouraged and monitored for timely implementation. The reviews and reforms of national and provincial policies, legislation and norms and standards should be processed after consultation at the National Liquor Policy Council (Council) for harmonisation to be effectively achieved in the manner envisaged in the Act. This will improve enforcement and monitoring of compliance. It will also strengthen national and provincial strategies to eradicate liquor abuse and reduce the harmful effects of liquor.
- 1.6.17 To standardise regulatory enforcement and ensure collaboration within the three spheres of government, national, provincial and local government responsible for liquor regulation must work together as seamlessly as possible to coordinate policy response, and share information to ensure the success of regulatory enforcement activities. Departmental inspectorates must act in concert with the South African Police Service (SAPS), Department of Justice and Constitutional Development (DoJ&CD), Department of Transport (DOT), South African Revenue

Service (SARS), Department of Agriculture, Forestry and Fisheries (DAFF), Department of Health (Health), Department of Cooperative Governance and Traditional Affairs (COCTA), provincial as well as municipal inspectorates, subject to adherence to all relevant governing legislation. There is a need for a coordinated training programme for inspectors and the dti should take the lead on this matter.

- 1.6.18 In order to enhance capacity within the transformed NLR and provincial liquor authorities, the SAPS officials need to be appointed as inspectors in terms of the relevant legislation where necessary to complement the existing capacity. The enhanced capacity will assist in the monitoring and enforcement in the liquor industry.
- 1.6.19 The norms and standards including inter alia the issue of age verification, secondary supply of liquor to minor, uniform trading hours, sale or supply of liquor to intoxicated person, noise, nuisance and pollution as adopted by the Council should be integrated in both national and provincial legislation and regulations to ensure coherence and harmony, and be reviewed from time to time as may be necessary to achieve consistency and coherence in regulating the liquor industry.
- 1.6.20 There is a need to strengthen the provisions that deals with illegal manufacturing and trading in liquor, which should expressly include strict regulation of access to industrial alcohol, strict labelling of liquor products and prohibition of sale of liquor products with very high alcohol content. In this regard, those manufacturing importable substance and such causes damage or injury to patrons, such traders, suppliers and manufacturers should be held liable. The provision of liability will not exclude actions that may be taken under Common Law; Law of Delict or section 61 of the Consumer Protection Act, 2008 (Act No 68 of 2008). Furthermore, consumer awareness needs to be intensified.
- 1.6.21 For more effectiveness in regulating macro manufacturers and distributors, it is proposed that NLA be repositioned to become a National Liquor Regulator (NLR) of the dti with more capacity to deal with issues of compliance, education and awareness, enforcement, registration, and reviews. The NLR should monitor and enforce not merely the licensed traders but the trade of liquor holistically. The NLR will be directed by the Chief Executive Officer (CEO), who will be appointed by the Minister and report to the accounting officer of the Department of Trade and Industry. The NLR will be funded through normal budgetary process.
- 1.6.22 To improve the effectiveness of Council, it is proposed that the Council be empowered to take binding decisions on a particular matter if there is no quorum in two consecutive meetings. The Council shall take a binding decision in the third meeting, whether the meeting reaches a quorum or not.
- 1.7 There are a number of technical amendments that have been identified over the years of implementing the Act. These are articulated in the policy, but are not necessarily exhaustive.

The drafting of the Bill and the consultative process could bring more technical errors to the fore and these will be corrected accordingly.

## **2. BACKGROUND**

- 2.1 Pre 1994 all liquor manufacturing, distribution and trade in South Africa was regulated in terms of the 1989 Act. During the apartheid era, the economic benefits of the liquor industry were of greater importance to the regime than the social well-being of the majority of the people of South Africa. The benefits of the liquor trade were not balanced with the negative effects of liquor use.
- 2.2 Post 1994, the South African government started to consider laws in the liquor industry with a close view at the production and distribution of liquor. Government also considered how much alcohol was being consumed in the country. There was a clear need to put an end to illegal practices within the industry and to endorse an approach to economic and social policy that would balance the broader benefits of liquor trading and the harmful effects of liquor use.
- 2.3 Since then government attempted a new legislative framework to regulate the liquor industry. A policy framework was approved in 1997 that sought to regulate the registration of liquor and create enforcement structures to enforce the liquor legislation. The policy outlined the new approach to liquor legislation and sought to address the socio-economic disparities and constraints.
- 2.4 In 1998, the dti tabled a Liquor Bill to Parliament proposing, amongst others, to change the existing system of liquor regulation and replace it with a rigid three tier- based liquor regulation system. Due to concerns regarding provincial and national competence, the Bill was subsequently referred to the Constitutional Court for constitutional certification. The Constitutional Court found certain aspects of the Liquor Bill to be unconstitutional.
- 2.5 To this end, the Constitutional Court ruled that the national government (through the dti) has not succeeded in justifying its intervention in so far as the regulation of retail sale and micro manufacturing of liquor was concerned. The Court ruled that the dti however, made a case in justifying its intervention in creating national systems of registration for manufacturers and distributors of liquor. Business zoning and other issues relating to liquor licensing such as trading hours, however was said to remain a local government competency.
- 2.6 It was on the basis of this Constitutional Court ruling that the dti acquired exclusive regulation competence over macro manufacturing and distribution of liquor. Provinces would exclusively hold the regulation competence over micro manufacturing and retail sale of liquor. Following extensive consultation with all relevant stakeholders, the Liquor Act, 2003 was promulgated on 13 August 2004. The Act repealed the 1989 Act only in those provinces that have enacted and promulgated their own provincial legislation. To date, only the Western Cape, KwaZulu-Natal

and Northern Cape provinces have promulgated their provincial legislation in line with the Act. The 1989 Act remains in force in the remaining six provinces. In some provinces the 1989 Act co-exists with other provincial legislation and this co-existence causes a lot of confusion and is not helping towards harmonisation in the common regulation and strategy of liquor.

- 2.7 The Act sets the tone for the transformation of the liquor industry. Since the inception of the Act several in-roads have been made in addressing challenges associated with the socio economic effects of liquor abuse and facilitating access to entry into the market. In a vigorous manner, government is embarking on a harmonisation programme of reviewing national and provincial policies by discussing these issues before the Council for alignment, but also taking into consideration direction from Cabinet, Inter-Ministerial Committee ("IMC") to Combating Substance Abuse, Parliament and Provincial legislatures.
- 2.8 The level of alcohol abuse in the country resulted in the establishment of the IMC by the President in 2010. The IMC is chaired by the Minister of Social Development Ms Bathabile Dlamini. The IMC was tasked with coordinating government interventions to combat substance abuse. The IMC held through Social Development a consultative summit in Durban on 15 to 17 March 2011 where resolutions were adopted for implementation.
- 2.9 The policy options in this document are based on recommendations made in consultative process within government, including the IMC that focused on national government coordination. Further, most of the aspects relating to trading and limiting accessibility to liquor products were addressed through the norms and standards that have since been adopted by the Council, with more focus on alignment between national and provincial imperatives. This is so in order to foster co-operative governance between national and provincial government. This policy document has thus taken into account the importance of coordination both horizontally and vertically within government to achieve harmony and coherence in regulating liquor trade.

### 3. PURPOSE AND PROBLEM STATEMENT

- 3.1 **the dti** and the provincial departments have responsibilities to regulate liquor trading in all its forms and as a result they have joined hands to coordinate policies, legislation and strategies in regulating liquor. Liquor has unwanted consequences if its production, distribution and consumption are not properly regulated. The review of the liquor policy takes into account the progress made since the inception of the current legislation, and proposes systems and structures that will address the existing constraints in the industry. The previous policy consideration of restructuring the liquor industry and giving priority to facilitation of entry and empowerment of new entrants; and to better reflect all costs associated with liquor abuse, including alcohol related problems in health and other fields remain critical and to a great extent remains the vision of the current policy.

- 3.2 The existing policy framework has not been effective in a number of areas and due to this, the market conditions have not changed much since the inception of the current legislation. In the decade that has passed since inception, there is not enough evidence that demonstrates that sufficient structural changes have taken place in the industry.
- 3.3 The challenge of balancing the effect of liquor abuse and excessive consumption of liquor against promoting the economic imperatives of the industry remains vast. Alcohol abuse is and has been a serious economic cost to South Africa.
- 3.4 In summary the overall objective of the policy review is to look holistically at the following challenges attached to the South African liquor industry as identified:

#### **3.4.1 Socio-economic impact of liquor and other costs of alcohol abuse**

- 3.4.1.1 Alcohol abuse is on the increase, leading to increasing levels of conflict in the family, violence, crime and alcohol related diseases, sexual violence and high-risk sexual behaviours, as well as road accidents feature high on the impact list. Currently, alcohol is easily available in an estimated 230 000 liquor outlets in South Africa. According to a report by the Medical Research Council, South Africa consumes about 5 billion litres of alcoholic beverages per year. The recent study by Goldstein (2015) stated that South Africa has some of the worst drinking habits in the world. While only 60% of South Africans drink alcohol-higher than the worldwide average of 52%- the level of alcohol consumed amounts to each citizen drinking between 10 and 12.4 litres of pure alcohol per year. Worldwide consumption is, on average, 6.2 litres. Alcohol is estimated to cost South Africa R37.9 billion annually. This includes costs around health care, crime and social welfare, alcohol treatment and prevention and road traffic accidents.
- 3.4.1.2 Further, South Africa has one of the highest rates of foetal alcohol syndrome (FAS) in the world. FAS have also reached endemic proportions in some parts of the country. The Western Cape, Northern Cape and Gauteng are reported to have the highest FAS prevalence in the world. The WHO has revealed that FAS is a leading cause of mental retardation in a number of countries, including South Africa. The research by the Foundation for Alcohol Related Research (FARR) reported an increase in the prevalence of FAS in school-aged children in the Western Cape (Wellington). Between 1997 and 2001, the rate of FAS increased from 4.8 percent to 8.8, whilst worldwide, the FAS rate is estimated to be 0.97 births out of 1,000. Nationally, the FAS rate is estimated to be 14 out of 1,000 births. FARR estimates that there are 1 million FAS people in the population, plus another 5 million alcohol-damaged individuals. This means that there are 6 million people that are mentally or physically disabled by the effects of alcohol (Graham: 2012).
- 3.4.1.3 The anti-abuse provisions in the Act rely heavily on the implementation of anti-abuse programs [sic] by manufacturing and distribution licensees; to date industry contribution towards strategies to reduce liquor abuse has not been significant. The extent and adequacy of contribution to anti-abuse strategies at retail level is also lacking.

- 3.4.1.4 In view of the above, Government should use a comprehensive and coordinated approach in order to deal with the social harm resulting from alcohol abuse.

### **3.4.2 Transformation in the liquor industry**

- 3.4.2.1 Historical factors have contributed to high levels of concentration and thus low levels of competition in many areas of the South African liquor market. This has for some time been a key policy concern of government in the manufacturing and distribution sector. Large enterprises continue to dominate the liquor landscape. There has however been a significant increase of distribution licences, mostly due to the requirement that each distribution premises should hold its own licence. Despite this substantial increase in the number of distribution licences awarded, the extent of vertical integration between production and distribution suggests that the extent of concentration in the distribution sector remains fairly high.

- 3.4.2.2 While attempts are made to transform the industry and welcome new participation by the historically disadvantaged individuals, there are indications that the industry remains highly untransformed and the individuals that benefited mainly from previous policies remain beneficiaries under the current legislation. Not much progress has been achieved by the liquor legislation and policy to encourage participation and transformation. Further, the ability of the NLA to facilitate more participation and transformation is hampered by the loopholes that exist in the legislation relating to conditions.

- 3.4.2.3 Given the above, the NLA must be empowered to ensure that licensing conditions as articulated in the B-BBEE Codes of Good Practice are strictly imposed and monitored.

### **3.4.3 Standardisation of key aspects of regulation and collaboration**

- 3.4.3.1 The current fragmented manner of liquor regulation is hampering enforcement and effectiveness of interventions that are put in place to counter the harmful effects of liquor. There is a dire need to harmonise provincial liquor legislation and all other legislation applicable to liquor with the Act and repeal of the 1989 Act.

### **3.4.4 Eradicating the manufacturing and trading in illegal liquor**

- 3.4.4.1 The large illegal sector is a concern for regulators and a threat to the licensed players within the industry. It is also difficult to successfully impose strategies to combat liquor abuse, compile full statistics or data to evaluate and monitor incidences of liquor abuse when this illegal sector persists.

- 3.4.4.2 Therefore, there is a need to strengthen the provisions that deals with illegal manufacturing and trading in liquor. Coordinated strategies should be developed and implemented to effectively deal with illegal liquor, including importable substances which are a health hazard.

### **3.4.5 Regulatory capacity within the National Liquor Regulator (NLR)**

- 3.4.5.1 Effective regulation requires adequately resourced regulators to undertake the regulatory task set out in the legislation. Currently, the Minister of Trade and Industry is responsible for the designation of any person as an inspector. The said inspectors are to a great extent limited to exercise their powers as granted to them in terms of the Act. Since its inception the NLA has been unable to appoint a satisfactory number of inspectors to reasonably monitor licences issued for manufacturing and distribution value chains.

- 3.4.5.2 Therefore, the NLA need to be repositioned to become a National Liquor Regulator (NLR) of the dti to deal effectively with issues of compliance, education and awareness, enforcement, registration, and reviews.

### **3.4.6 Introducing an internal review mechanism within the NLR**

- 3.4.6.1 The current structure of the NLA has no provision for an internal review mechanism or process. All reviews and appeals follow the judicial process as they are referred to the courts. This potentially results in exorbitant costs and tedious and lengthy court processes, often times, just for minor administrative issues. It also impacts on access to speedy redress in cases where applicants are aggrieved.

- 3.4.6.2 Therefore, there is a need for an internal mechanism to be created, which will deal with reviews in respect of liquor registration matters. This will be a step before a matter can be referred to court to minimise costs to the state and industry.

### **3.4.7 Ensuring an effective National Liquor Policy Council (Council)**

- 3.4.7.1 The Council is a coordinating structure to facilitate cooperative governance in the Act. The Council meeting quorate when the Minister and five (5) Members of the Executive Council (MECs) are present. The inability to secure a quorum to meetings has resulted in the cancellation of numerous meetings in the past, a situation that has delayed the finalisation of numerous matters to date.

- 3.4.7.2 As a result, the effectiveness of the Council must be improved for proper policy coordination and consistency in regulating the liquor industry.

- 3.5 The purpose of this document is to propose policy interventions to address the challenges identified during the implementation of the Act, and as identified by various assessments alluded to in this document.

#### 4. DISCUSSION

- 4.1 Following identification of the various challenges and shortcomings within the existing liquor framework, the challenges are considered and discussed in detail. Necessary interventions are also proposed to counter each challenge or shortcoming.

##### 4.1.1 The socio-economic impact of liquor and other costs of alcohol abuse

- 4.1.1.1 Since 1994, the issues of liquor abuse and combating its adverse effects have been amongst key government concerns. The change in legislation had, as one of its objectives, reduction of socio-economic and other costs of alcohol abuse. Various research literatures indicate that alcohol abuse has risen significantly in recent years.

- 4.1.1.2 Alcohol is seen as the most widespread drug of abuse in South Africa (SA) and the most harmful drug at a population level. It is the third-largest contributor to death and disability after unsafe sex or sexually transmitted infections and interpersonal violence, both of which are themselves influenced by alcohol consumption. In total, 36 840 deaths (6.1% of total mortality), 787 749 years of life lost (7.4% of premature mortality) and 344 331 years lived with a disability (6.2% of total disability) were attributable to alcohol, which together accounted for more than 1.1 million disability-adjusted life years (DALYs), or 7% of the total disease burden. More recent analysis has included the contribution of alcohol to infectious diseases, which increased the estimated total alcohol attributable DALYs for SA to more than 1.3 million in 2004.

- 4.1.1.3 Injury-related causes account for nearly half (41%), with the largest single contribution from intentional injuries, i.e. interpersonal violence and suicide, at 25%. Unintentional injuries, including road traffic injuries, accounted for 16% of DALYs. Infectious diseases accounted for a third of DALYs, with tuberculosis (18%) and HIV/ AIDS (13%) being the largest contributors. Non-communicable diseases accounted for the remaining alcohol-attributable DALYs, with neuropsychiatric disorders, including epilepsy and common mental disorders, the single largest component (Matzopoulos et al. 2014).

- 4.1.1.4 In SA, 46% of cases of mortality due to non-natural causes have had blood alcohol levels greater than or equal to 0.05g/100ml, the legal limit for driving (Matzopoulos et al 2002 in Schneider et al 2007). Further, research conducted in three cities in South Africa between 1999 and 2001, found that between 17% and 67% of trauma patients had breath alcohol concentrations greater than or equal to 0.05g/100ml (Plüddemann et al, 2004 in Schneider et al, 2007).

4.1.1.5 Alcohol abuse entails enormous costs to the public sector. According to Goldstein (2015) alcohol is estimated to cost South Africa R37.9 billion annually. This includes costs around health care, crime and social welfare, alcohol treatment and prevention and road traffic accidents.

4.1.1.6 Roughly a quarter to a third of all hospital admissions is said to be directly or indirectly related to alcohol. Liquor abuse is associated with a wide range of medical conditions, including cirrhosis of the liver; cancers of the tongue, mouth, throat, larynx, oesophagus and liver; central nervous system impairments; nutritional disorders; cardiovascular abnormalities; depression and increased susceptibility to diseases such as pneumonia. This of course discounts the much physical and emotional harm caused to others or to self by persons under the influence of liquor. The table below provides an overview of how the death rates from ten (10) of the diseases that are caused by alcohol have changed from 2002-2008.

| <b>Disease</b>              | <b>2002</b> | <b>2008</b> | <b>Increase/decrease</b> |
|-----------------------------|-------------|-------------|--------------------------|
| Liver Cirrhosis             | 6.6         | 2.2         | -67%                     |
| Mouth and oropharynx Cancer | 2.9         | 3.8         | 31%                      |
| Oesophagus Cancer           | 11.8        | 12.3        | 4%                       |
| Liver Cancer                | 4.9         | 4.4         | -10%                     |
| Colon and Rectum Cancer     | 5.4         | 5.4         | 0%                       |
| Breast Cancer*              | 6.9         | 8.6         | 25%                      |
| Hypertensive heart disease  | 19.3        | 18.5        | -4%                      |
| Alcohol Use Disorder        | 1.5         | 1.2         | -20%                     |
| Tuberculosis                | 31.8        | 39.3        | 24%                      |
| HIV/AIDS*                   | 794         | 529.5       | -33%                     |

*Source: World Health Organisation in DNA Economic 2013*

4.1.1.7 Maternal alcohol consumption can lead to miscarriages, low birth weight infants or FAS. In South Africa, the rates of FAS are estimated to be 18 to 141 times greater than those for the various populations in the US (May et al., 2000). In advanced industrial societies, FAS is relatively rare, occurring in one out of every 750 children. In South Africa, it is by far the commonest antenatal cause of mental and physical disability. In 2009, 25 000 babies were being born every year with FAS, which was the highest figure in the world. Data on admissions to substance abuse related treatment centres between 2008 and 2010 suggest that alcohol tends to be the leading substance of abuse throughout the country.

4.1.1.8 There is also a significant increase in the consumption of alcohol amongst youth. This sets in place high consumption patterns and related problems into adulthood. Early alcohol use has been shown to increase risk for chronic alcohol addiction and other alcohol problems in later life. The reasons for increased consumption include, inter alia, high levels of unemployment and a lack of recreational facilities to cater for social needs.

- 4.1.1.9 In 2002 the Youth Risk Behaviour Survey was conducted by the Medical Research Council and it indicated that 32% of South African high school students had drunk alcohol within the previous month. Their sample was of about 10 000 students and it was looking specifically at teenagers younger than 18 years. Further survey done in 2008 shows that the figure had risen nationally to 34%. The highest levels of problematic youth drinking are experienced in the Western Cape, followed by Gauteng and the Northern Cape. Nationally, more than a quarter of teens surveyed are indulging in alcoholic binges.
- 4.1.1.10 The survey also looked at binge drinking which they defined as five or more drinks within a few hours. In 2002 nationally the figure was 23% whilst in 2008 the figure rose to 28.5%, which is a remarkably high number of teenagers who are drinking with the intention of becoming completely drunk.
- 4.1.1.11 Research shows that the younger people start drinking, the more likely that they will experience problems from heavy drinking at a later stage. Also proven is that young people experience more harm than adults from drinking the same amounts of liquor. Recent research indicates that brain development continues until about age 25 (Coalition for Juvenile Justice, 2006). Consumption of alcohol during the adolescent years can affect brain development and may result in long-term negative effects. Underage drinking may impair this neurological development, causing youth to make irresponsible decisions, encounter memory lapses, or process and send neural impulses more slowly. Alcohol use also encourages risky sexual behaviour. Youths who drink may be more likely to have sex, become pregnant, or contract sexually transmitted diseases.
- 4.1.1.12 Further, alcohol use by adolescents is associated with abnormalities in the volume of the prefrontal cortex, the part of the brain that controls reasoning and impulse (Medina et al., 2008). Low prefrontal cortex development may lead to deficiencies in reasoning and impulsive behaviour. With the use of alcohol and other drugs over time, youths may fail to advance to more complex stages of thinking and social interaction. Youths with alcohol-use disorders often perform worse on memory tests and have diminished abilities to plan (Bonnie and O'Connell, 2004). Effects may also include hallucinations, psychotic episodes, changes in sleep patterns, and changes in the ability to concentrate. It is therefore imperative to delay as much as possible the initiation of liquor consumption by youth.
- 4.1.1.13 Many countries have set their minimum drinking age at eighteen (18). However, European countries such as Belgium, France and Italy have set sixteen (16) years as a minimum drinking age. The minimum legal drinking age at [sic] United State [sic], Ukraine, South Korea and Malaysia is twenty one (21); and twenty (20) in Japan. It is clear that minimum drinking age in the Asian countries is above 18 years. The issue of imposing an age limit is a prerogative of each state.

- 4.1.1.14 There is tangible evidence that changes in minimum drinking age laws do have substantial effects on youth drinking and alcohol-related harm, for example, road traffic accidents. Many studies have found that raising the minimum drinking age from 18 to 21 years decrease single vehicle night time crashes involving young drivers by 11% to 16% at all levels of crash severity (National Youth Development Agency: 2012). Changes in the minimum drinking age are related to changes in other alcohol related injury admissions to hospitals and injury fatalities.
- 4.1.1.15 Studies by amongst others Wagenaar & Toomey, Hingson & White De Jong & Blanchette, Casswell & Maxwell, indicates that an increase in minimum purchase age is one of the most effective measures to reduce alcohol-related harm. In the United States, for example, the lowering of the legal drinking age in most states in the 1970s was linked with an increase in alcohol consumption and alcohol-related traffic crashes involving young people. When the age was raised to 21, rates of traffic crashes decreased.
- 4.1.1.16 There are however, those who argued that age 21 law in the US is a bad social policy that has driven drinking behind closed doors and underground and therefore contributing to binge drinking. They further argued that since many young people are already accessing alcohol through parents or other adults, the purchase age is immaterial and echoed that liquor abuse is a social problem which will only be alleviated by social programmes which raise the level of public awareness and education about the dangers of excessive alcohol consumption (Casswell & Maxwell).
- 4.1.1.17 In 1999, New Zealand lowered the minimum purchasing age for alcohol from 20 to 18 years. Most of the research on reducing minimum purchasing age found that this resulted in an increase in the number of alcohol involved crashes involving 15-17 year olds [*sic*] drivers. It was also found increases in emergency department admissions for intoxication in 18- to 19-year-olds relative to persons aged 20 years and older.
- 4.1.1.18 However, the use of alcohol today poses a major threat to the quality of life of many South Africans, ultimately causing detrimental public health effects as well as negative socio-economic effects on the country. Alcohol misuse or abuse has become an everyday reality that directly or indirectly impairs peoples' lives, not only individually, but also on familial, societal and national levels. Therefore, the health and social burden need to be taken into consideration. The purpose of age 21 is to prevent acute harm among young drinkers and protecting them from long-term negative outcomes they might experience in adulthood, for example, alcohol and other drug dependence and psychological effects, crime etc.
- 4.1.1.19 From the above, it is clear that increasing drinking and purchase age has an impact independently and or cumulatively with other factors on the reduction on increase of drinking. Other factors include but not limited to excise tax on alcohol; national maximum legal blood alcohol concentration when driving a vehicle; restrictions for on/ off-premise sales of beverages

(time, hours and days) or places selling liquor (petrol stations); and legally binding regulations on alcohol advertising, sponsorship or sales promotion.

- 4.1.1.20 Research shows that a high concentration of liquor outlets leads to a variety of health and social consequences including violence, alcohol impaired driving, neighbourhood disruption and public nuisance activities. Further, research has demonstrated increasingly that density of liquor outlets can be casually related to rates of crime and violence and other types of alcohol-related problem.
- 4.1.1.21 Studies shows that young people who are exposed to alcohol marketing are more likely to start drinking, or if already drinking, to drink more. It was also found that alcohol advertisements reach or specifically target teens not only through television and magazines, but also through other varied media such as radio, movies, billboards, and sports stadium signs. Considering the important public health concerns related to alcohol, the prevalence of underage drinking, and the association between alcohol advertising and alcohol use, it would be prudent to increase efforts to curb the negative effects of alcohol advertising.
- 4.1.1.22 The South African alcohol industry makes a considerable contribution to the domestic economy through employment, output and export earnings; however, it imposes enormous social and emotional costs. Alcohol ranks as the most harmful drug, based on the magnitude of harms the drug causes both to drinkers and those affected by drinking. There are also intangible, non-financial costs of the trauma associated with alcohol-related illness, injury and violence.
- 4.1.1.23 The draft liquor policy's approaches are multifaceted and the pending legislation should address specifics of how to deter problems related with alcohol drinking. The policy and legislation should support the reduction of harm in drinking and surrounding environments. This should also apply in supporting interventions for individuals.
- 4.1.1.24 As can be seen from the above there are very real, rife and negative consequences attached to liquor abuse. There is, therefore a growing concern, that without proper and urgent intervention, these problems, which are already reaching endemic proportions, will be uncontrollable.
- 4.1.1.25 Currently, liquor manufacturers are required to undertake anti-abuse programs [*sic*] to help alleviate the burden associated with the abuse of liquor. However, although the major manufacturers of alcohol have invested in a wide range of anti-abuse programs [*sic*], research found that a number of issues have significantly reduced the effectiveness of their spending. Of most concerning is the fact that the majority of industry programs [*sic*] are not evidence-based and cannot be evaluated.
- 4.1.1.26 As commercial entities, liquor producers are incentivised to cut costs and maximise profits. More fundamentally, consideration needs to be given to whether or not it is appropriate for the liquor industry to select and administer anti-abuse and harm reduction programs [*sic*]. What is

much more difficult to overcome is the inherent conflict of interest between the commercial objectives of profit maximisation (which will often include maximising volumes sold), and the obligation placed on industry to invest in measures intended to decrease how much people drink.

- 4.1.1.27 A major failure has also been that the Act provides little or no guidance on how the NLR should assess whether the proposed interventions are sufficient to meet with registration requirements. As a result, little is done by the NLR to ensure that such programs [*sic*] are appropriately designed to proportionately address the burden, in an evidence-based manner.
- 4.1.1.28 Therefore there is a need for government to intervene, primarily through regulatory action, to satisfactorily address these challenges and eradicate the inherent conflict in industry being tasked with this important aspect.
- 4.1.1.29 The following recommendations will assist in addressing the socio-economic impact of liquor:

*Publisher's Note:*

*Numbering below as it appears in the Government Gazette*

- 4.1.1.24.1 There is a need to reduce liquor advertising as part of a holistic approach to reducing liquor abuse. Studies shows that young people who are exposed to alcohol marketing are more likely to start drinking, or if already drinking, to drink more. Consequently, the Minister of Trade and Industry must be empowered through amendment to Section 9 (advertising restrictions) of the Act to determine more restrictions and parameters for advertising and marketing of liquor products, for example, all broadcast television channels should advertise alcohol at night, from 22:00-06:00; remove content appealing to youth in alcohol advertising, such as using sport stars, models, etc.; branding of liquor premises and delivery truck and/or cars should be prohibited, and counter- advertisement which identifies the harmful effects of liquor abuse, for example, car crashes and victims, ailments caused by liquor, family violence and other social ills. Various departments must develop programmes in this regard. The restrictions will be determined in the regulations to be prescribed by the Minister. This should also be reflected in provincial and municipal laws.
- 4.1.1.24.2 In order to standardise registration and licensing requirements, liquor premises must be located at least five hundred meters (500m) away from schools, places of worship, recreation facilities, rehabilitation or treatment centres, residential areas and public institutions. Further, no liquor licenses shall be issued to petrol service stations; premises attached to petrol service stations; and premises near public transport. However, the licensed premises within the 500m radius and premises within high density locations will have to comply with the Norms and Standards issued from time to time providing for amongst others, the issue of trading hours, noise, nuisance and pollution. In this regard, licensing authorities within their discretion may impose tighter trading conditions that trading hours of the outlets should not coincide with lessons during school hours.

Licensing authorities need to work closely with municipalities and traditional authorities before granting liquor licenses.

- 4.1.1.24.3 To reduce the harmful use of liquor, it is also important to regulate the availability of liquor. One of the strategies to reduce the availability of liquor includes the need to regulate days and hours when alcohol sales should be permitted. Liquor authorities and municipalities need to control access to alcohol by for example restricting times for sales of liquor and sales of liquor in zoned areas. The set uniform trading hours within the norms and standards should be integrated in national, provincial and municipal legislation.
- 4.1.1.24.4 To regulate accessibility of alcohol at public events or any liquor outlet, the licensees, manager or any other person dispensing liquor at the premises must take steps to ensure verification of the age of any person who appears to be under the age of 21 by requesting an identity document, passport or driver's license in order to verify the person's age before any liquor may be sold or supplied to them. It should be an offense therefore for such persons to sell liquor to persons under the age of 21 and for persons under the age of 21 to provide false evidence of their age in order to access liquor or enter a liquor premise. Contradicting the age limit rule should also attract strict liability and is a criminal offence. Public events in this regard include school activities, special occasions at stadia, corporate events etc.
- 4.1.1.24.5 Research found that there is an association between alcohol availability, rates of alcohol consumption, and drinking-related problems. Investigations in the United States have found strong relationships between alcohol outlet density and adverse outcomes such as alcohol-related hospital admissions, child abuse and neglect, motor vehicle accidents, pedestrian injuries, drunk driving and a range of mortality outcomes (Donnelly et al.2006 in Bowers et al). It is stated that increases in alcohol availability contribute to increases in alcohol consumption, which contribute to increased alcohol-related problems. Therefore, regulating the density of alcohol outlets is an effort to minimise excessive alcohol consumption and related harms. Alcoholic beverage outlet density in this regard refers to the number of physical locations in which alcoholic beverages are available for purchase either per area or population. Outlet density may be regulated through licensing and zoning regulations. In this regard, licensing authorities need to ensure that there are stricter licensing requirements, and work in collaboration with municipalities, traditional authorities and town planners in terms of zoning. Further, Premises [sic] within high density locations will have to comply with the norms and standards issued from time to time providing for amongst others, the issue of trading hours, noise, nuisance and pollution. Outlet density is required to affect excessive alcohol consumption and related harms by changing physical access to alcohol, which is increasing proximity to alcohol retailers. A primary rationale for limiting alcohol outlet density is to improve public health and safety.
- 4.1.1.24.6 Manufacturers and suppliers have a responsibility to ensure that liquor products are not supplied to unlicensed traders. Where liquor is supplied to illegal traders, the traders' involved

and suppliers should be held responsible if harm or damage ensues to the patrons within or near to the premises where such illegal liquor was being traded; and where liquor has been supplied to illegal traders and the manufacturer did not take reasonable step [sic] to stop that supply, the manufacturer should also be held liable when harm or damage ensues.

- 4.1.1.24.7 In respect to retailers, in line with the agreed norms and standards, traders should not serve liquor products to already intoxicated persons. The following are common signs of visible intoxication, slurred speech; move in a swaying manner or difficulty walking straight; becoming physically violent; and becoming loud, boisterous and disorderly. Should that happen and the intoxicated person is involved in motor accidents or crime related to substance abuse, the trader should bear liability for any harm or damages within or near the premise. The burden of proof will shift from the state to the respondent or manufacturer, supplier and trader who is trading contrary to the rules and regulations.
- 4.1.1.24.7 Review of the national minimum legal drinking age from 18 to 21 years. Research shows that teenage drinking is on the increase and that the younger people start drinking, the more likely that they will experience problems from heavy drinking at a later stage. It is stated that adolescence is a period when teenage brain undergoes important developments. This period of brain development continues until the age of 25. Consequently, exposing [sic] adolescent brain to alcohol during this period may impair neurological development causing youth to make irresponsible decisions, encounter memory lapse, or process and send neural impulses more slowly. It is therefore imperative to delay as much as possible the initiation of liquor consumption by youth.
- 4.1.1.24.8 To address the socio-economic impact of alcohol abuse in the society, it is significant to amongst others, strengthen the registration conditions. Consequently, section 13 of the Liquor Act should be amended to provide [sic] Minister with powers to issue regulation and guidelines on combatting alcohol abuse and to monitor compliance thereof.
- 4.1.1.24.9 In order to enhance the impact, there is a need to intensify education and awareness. Education and awareness must therefore be included in the Act as part of the functions of the National Liquor Regulator (NLR) and Department of Trade and Industry ("the dti"), and NLR to be adequately capacitated to perform this function. There is a need for a general education and public awareness programmes among all levels of society about the dangers or harmful effects of alcohol abuse. Consumers need to be educated about the harmful effects of alcohol abuse by way of electronic and print media, schools, public health facilities, and community organisations. This will ensure that the community is empowered to take control over their lives. Further, licence holders (manufacturers, distributors and retailers) need to be constantly educated on the Liquor legislation in order to comply and avoid irresponsible trading. There is a need for cooperation with all tiers of government to intensify education and awareness. The codes, strategies and programmes addressing the issue of effective communication of the

harmful effects of alcohol abuse with the public will be determined in the Act and regulations to be prescribed by the Minister.

- 4.1.1.24.10 Further, research shows that pricing policies can be used to reduce underage drinking, to halt progression towards drinking large volumes of alcohol and or episodes of heavy drinking and to influence consumers' preferences. Increasing the price of alcoholic beverages is therefore one of the most effective interventions to reduce harmful use of alcohol (WHO: 2010). This should be done through effective and efficient system for taxation together with adequate tax collection and enforcement. The National Treasury must maintain a reasonable and appropriate excise tax burden on alcoholic beverages. There might be scope to further increase the excise duties on alcohol beverages. This should be done mindful of the potential impact on illicit trade.
- 4.1.1.24.11 Furthermore, driving under the influence of alcohol affects a person's judgement, coordination and other motor functions. According to WHO (2014) establishment of maximum limits for drivers and the enforcement of drink- driving policies and sobriety checkpoints and random breath testing is a cost effective strategy, and can reduce traffic crashes by roughly 20%. The Department of Transport should therefore ensure that this strategy is properly enforced. Regular road blocks should be conducted. All law enforcement agencies relating to liquor from all tiers of government should be involved.
- 4.1.24.12 Offences that address omissions and commissions by registrants are also proposed to curb the many effects of liquor. All of the proposed offences should be suitable for inclusion in provincial and municipal legislation addressing common issues such as supplying liquor to persons now allowed in terms of the Act (e.g. unlicensed outlets or persons under the age of 21), providing liquor authorities with false or misleading information during application, objection or inspection, or failing to display a notice on the premises or a label required in respect of the packaging on liquor products required in terms of the relevant legislation. In order to achieve consistency and improve enforcement, it is proposed that provisions dealing with offences in provincial legislation also be aligned across provinces to facilitate seamless enforcement action.

## **4.2 Transformation in the liquor industry**

- 4.2.1 On the whole, the South African liquor is currently still predominantly white-owned, owing to a large extent to the fact that its past regulatory regime has led to highly concentrated ownership patterns and subsequently high barriers to entry.
- 4.2.2 The dynamics of ownership of the South African liquor industry have over the years made it almost impossible for new players to emerge and retain their place in the industry. From the history of the first liquor manufacturing company in South Africa, it is clear that the existing producers have over decades maintained monopoly in the manufacturing tier. This has to a great extent stifled competition in the industry and resulted in dominance of certain major role players and influence over market shares in the liquor industry.

- 4.2.3 In the distribution sector a significant number of the local distribution is owned by historically disadvantaged groups. However, the dti should take cognisance of the fact that dominant manufacturers' close relationship with these distributors, often through complex financial and contractual arrangements, prevents these distributors from being independent operators but workers. This results in exploitation of smaller players in the distribution segment and no actual transformation takes place.
- 4.2.4 While the competition law regime does to a certain extent address competition issues in various industries, its ability to address structural constraints is limited. This clearly calls for a much more strategic industry regulatory mechanism to facilitate change, and make the industry more competitive.
- 4.2.5 the dti has published the amended B-BBEE Codes of Good Practice, which shall assist in guiding the B-BBEE requirements for applicants. It is recommended that the NLR be empowered to impose allowed registration conditions as articulated in the amended B-BBEE Codes of Good practice and implement strict monitoring measures. Non-compliance to the B-BBEE Codes should result in the suspension or revocation of the registration certificate. The level of B-BBEE in the license requirements will be determined in the regulations to be prescribed by the Minister, for example, applicants for manufacturing and distribution licenses must demonstrate a category four B-BBEE compliance level. Provinces should within their legislative mandate also align licensing conditions to address transformation matters where necessary.

### **4.3 Standardisation of key aspects of regulation and improved regulatory collaboration**

- 4.3.1 Differences in provincial and national liquor legislation in South Africa certainly worsen the complexity of enforcement processes. It is hence crucial to address unnecessary statutory and regulatory differences in the country, for example with regard to the definition of liquor. Certain regulatory gaps, including those related to the content of e.g. ale and packaging requirements, need to be addressed.
- 4.3.2 One of the objectives of the Act is to establish national norms and standards in order to maintain economic unity within the liquor industry. The Act also provides for the much needed alignment of provincial liquor legislation with the Act.
- 4.3.3 Considering that almost ten years have passed since the Act came into law and that not much intervention has been made with regard to reducing the harms caused by liquor, it is imperative for purposes of effective and efficient liquor regulation that South Africa operates from a harmonised legal framework and that the old way of regulating liquor is eradicated.

- 4.3.4 The national and provincial departments responsible for liquor regulation should work together to ensure that the drafting of legislation in those provinces that still operate in terms of the old legislation takes place without delay in order to meet the deadline already set by the Council in the published national norms and standards. These legislations should also be in line with municipal by-laws for regulating the liquor industry. The Council must be utilised effectively as a forum where all policy and legislative proposals that affect the regulation of liquor at all spheres are continuously discussed.
- 4.3.5 Furthermore it is important for government to reconsider zoning areas at which liquor is manufactured, distributed or sold to the public. Currently, liquor manufacturing or distribution registrant certificates have been granted to businesses that are conducted in unacceptable conditions such as in flats, garages and shacks. The lack of pre- inspections during the application process has largely contributed to this dilemma. However, post inspections assist in identifying non-complaint operators and a process to cancel them is proceeded with, which can be avoided through pre-inspection.
- 4.3.6 Due to the nature of liquor manufacturing and distribution, it is unacceptable that this two value chains can be conducted within residential areas. There is also an outcry from the public that retail liquor trading should be conducted at business nodes. A call that is challenging for liquor regulators is the existence of these business nodes in rural areas and townships.
- 4.3.7 This call may be a possible one for manufacturing and distribution. During reviews or renewals of registration a condition to relocate to an industrial zoned area can be imposed upon assessment of reasonableness of such condition. Any failure to relocate a distribution business within a period of six months after being requested to do so may result in the suspension and/ or revocation of the registration. All new registrations should be issued on properly industrial zoned areas.
- 4.3.8 The Act provides for two types of registrations namely manufacturing and distribution. In the current status an applicant can hold both manufacturing and distribution certificates in one premises. The challenge comes with the different registration conditions applicable and ensuring compliance with such conditions. This challenge is further compounded where a retail license is issued to a person who either holds a manufacturing or distribution registration. A further challenge with enforcement arises with registration being issued to companies who operate in various branches instead of specific premises.
- 4.3.9 It is therefore proposed that:
- 4.3.9.1 A standard and uniform definition must be utilised throughout the Republic when referring to liquor and also the DAFF needs to enhance regulation on the content of liquor and packing requirements.

- 4.3.9.2 Schedule 1 should be amended to include a reasonable cut-off period within which all provinces should enact and align their liquor legislations with the Act, norms and standards and municipal by-laws.
- 4.3.9.3 The norms and standards as adopted by the NLPC should be integrated in both national and provincial legislation and regulations, as the case may be, to ensure coherence and harmony. Therefore pre-inspections and zoning certificates must be a mandatory requirement before an application is considered for a liquor license or registration. Consistent conditions will also assist in facilitating compliance measures for each registration or licensing conditions.
- 4.3.9.4 To ensure effective regulation of the liquor sector requires that a large number of provincial and national bodies (including NLR, Municipalities, DAFF, SARS, SAPS, Health, DoJ&CD) work together as seamlessly as possible to coordinate regulatory response, share data and ensure the success of enforcement activities. Departmental inspectorates must act in a coordinated manner with SAPS, SARS, DAFF, Health as well as provincial inspectorates. Therefore there is a need for a coordinated training programme for inspectors and the dti must take the lead in this matter.

#### **4.4 Eradicating the manufacturing and trading in illegal liquor**

- 4.4.1 The production of illegal liquor is a multi-facet problem and is also influenced by efforts to evade excise duties on alcoholic beverages. In such cases licensed or unlicensed manufacturers use cheaper spirits to produce illegal/ersatz variants of other categories of spirits and the use of industrial alcohol (methanol or ethanol) to produce cheap spirits. The easy availability of cheap industrial alcohol, and the lacuna that currently exists in the context of ales appears to further facilitate the illicit market.
- 4.4.2 Not only is it crucial to clampdown on illicit liquor manufacturing in order to curb the harmful effects on the wellbeing of our people, but it is also necessary to promote an economically healthy liquor industry that fully contributes to the country's revenue and participates in initiatives proposed in alleviating the socio-economic burden caused by the liquor industry.
- 4.4.3 It has also been found that there are chocolates laced or mixed with alcohol on sale in South Africa either manufactured in the country or imported by major super markets. The alcohol percentage found in these chocolates is about 1% and above. These chocolates are easily available to young persons.
- 4.4.4 In view of the above, there is a need to strengthen the provisions that deals with illegal manufacturing and trading in liquor, which include strict regulation of access to industrial alcohol, strict labelling of liquor products and prohibition of sale of liquor products with very high alcohol content. Further, those manufacturing importable substance and such causes damage or injury to patrons, such traders, suppliers and manufacturers should be held liable. The

provision of liability will not exclude actions that may be taken under Common Law; Law of Delict or section 61 of the Consumer Protection Act, 2008 (Act No 68 of 2008). Furthermore, consumer awareness needs to be intensified.

#### **4.5 Regulatory Capacity within the NLR**

4.5.1 Currently, the NLA is a chief directorate within the dti to which the Minister of Trade and Industry delegated powers in terms of the Act to regulate the manufacturing and distribution of liquor, registration, education and enforcement.

4.5.1[sic] The comprehensive regulation of liquor requires the ability to control the physical movement of liquor products, it is thus important that liquor regulators across the country are adequately resourced to undertake this task. The larger and more complex the industry, the more resources the regulator will need to effectively police it.

4.5.2 Research indicates that both the national and provincial regulators are under resourced to perform monitoring and enforcements roles. The existing liquor inspectorate are essentially constituted to monitor registrants and not to monitor the trade, use and consumption of liquor products in totality. This has left the unlicensed sector and illicit liquor trade to thrive. This comes at the expense of the fiscus, creating unfair competition for licensed traders and contributing to the socio-economic costs of liquor abuse in the country and many other health concerns.

4.5.3 Considering the above challenges, it is proposed that NLA be placed in a position to perform its functions in the most effective manner and in accordance with the values and principles mentioned in Section 195 of the Constitution. It is therefore recommended that the NLA should be restructured to become a National Liquor Regulator (NLR) of the dti with more capacity to deal with issues of compliance, education and awareness, enforcement, registration, and reviews. Further the NLR should be fully capacitated with human resource to monitor and enforce not merely the licensed traders but the trade of liquor holistically. The National Liquor Regulator will be directed by the Chief Executive Officer, who will be appointed by the Minister and report to the accounting officer of the Department of Trade and Industry. The NLR will be funded through normal budgetary process.

4.5.4 Where necessary, additional capacity through the appointment of SAPS official should be provided for by the Act. The enhanced capacity will assist in the effective monitoring and enforcement in the liquor industry.

#### **4.6 Eradicating exorbitant costs, tedious and lengthy court processes**

4.6.1 Currently, whenever there is a dispute with regards to liquor administrative issues, these are referred to the courts. This process is often lengthy, costly and highly inconvenient.

4.6.2 Given the above, it is proposed that an internal review mechanism be established within the NLR. In this regard the head of the NLR must see to it that three senior independent persons within the dti serve on the structure to review complaints arising from the decisions of the NLR. If the applicant is still aggrieved after this process they may approach the court of law for relieve [sic].

4.6.3 The reasons for establishment of the internal review mechanism is to give all the affected individuals an opportunity to have their voices heard, to help those who cannot afford legal expenses to be able to have their cases adjudicated efficiently and effectively, and to provide speedy redress.

#### **4.7 Ensuring an effective National Liquor Policy Council (Council)**

4.7.1 The Council consists of the MECs responsible for liquor in each province and the Minister of Trade and Industry who chairs the Council and has a casting vote. The Council meeting quorate when the Minister of Trade and Industry and five (5) MECs are present.

4.7.2 The Council's role is to provide for consultation between the national and provincial governments, to determine national liquor policy, to promote uniform national and provincial laws and any matter concerning the management and monitoring of [sic] liquor industry in the [sic] South Africa.

4.7.3 The inability to secure quorum to Council meetings has resulted in the cancellation of numerous meetings in the past, a situation that has delayed the finalisation of numerous Council matters. It is hence necessary to enact legislative measures that make it easy for the Council to achieve its legislative mandate and effectively contribute to the regulation of the liquor industry in the South Africa.

4.7.4 To improve the effectiveness of Council, the Council should be empowered to take [sic] binding decision on the particular matter if there is no quorum in two consecutive meetings. The Council shall take a binding decision in the third meeting, whether the meeting reaches a quorum or not.

4.7.5 The Council' s secretariat should also be enhanced to effectively monitor the working of the Council.

#### **4.8 Transitional measures**

4.8.1 There is a need for transitional measures for dealing with existing liquor premises that are not compliant to the 500m radius prescripts. Non-compliant existing liquor premises may result in hefty penalties, suspension and/ or revocation of the registration or licence. However, there

should be aggressive communication (corporate leniency for a period of a year) by all tiers of government on this issue.

## **5. CONCLUSION**

- 5.1 The policy recommendations outlined in the document should be used in the draft liquor Bill. It is submitted that if the policy recommendations are followed, most challenges that currently face the regulation of liquor will be addressed.
- 5.2 The policy recommendations in this document have taken into account the respective mandates of the national, provincial and local governments, as well as specific areas for possible coordination and cooperation without compromising the independence afforded to each tier of government.
- 5.3 Recommendations pertaining to the age limit of 21 is based on the conclusive research of the WHO that there is a correlation between age and diseases related to alcohol. Brain impairment and FAS amongst the youths associated with alcohol warrant government to conscious and deliberate decision in protecting the youthful nation.

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