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## GENERAL NOTICE

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### NOTICE 446 OF 2015

#### DEPARTMENT OF TRADE AND INDUSTRY

#### NATIONAL LIQUOR POLICY

#### INVITATION FOR THE PUBLIC TO COMMENT ON THE NATIONAL LIQUOR POLICY

I, Dr. Rob Davies, MP, Minister of Trade and Industry having obtained Cabinet approval and after consulting the National Liquor Policy Council, hereby publish the National Liquor Policy for broader public comment.

Interested persons may submit written comments on the proposed National Liquor Policy within 30 calendar days from the date of publication to:

**Director-General, Department of Trade and Industry**

Private Bag X84

Pretoria

0001

**Or, Hand deliver to:**

77 Meintjies Street

Block B, 1<sup>st</sup> Floor

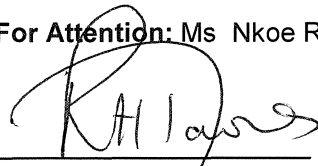
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**For Attention:** Ms Nkoe Ramphele



**DR ROB DAVIES (MP)**

**MINISTER OF TRADE AND INDUSTRY**

**DATE:** 5/5/2015

the dti

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CONSUMER AND CORPORATE  
REGULATIONS DIVISION  
SOUTH AFRICA



## LIQUOR POLICY REVIEW:

A discussion document for public  
consultation

**May 2015**

## LIST OF ACRONYMS

BBBEE	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
NYDA	National Youth Development Agency
PFMA	Public Finance Management Act
SAPS	South African Police Service
SARS	South African Revenue Service
<b>the dti</b>	Department of Trade and Industry
WHO	World Health Organisation

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## 1. EXECUTIVE SUMMARY

- 1.1 This document outlines the policy proposals 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 capacity and enforcement constraints 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 faced. 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 It is proposed that Section 9 (advertising restrictions) of the Act be amended to empower the Minister of Trade and Industry to determine the restrictions and parameters for advertising and marketing of liquor products in line with Control of Marketing of Alcoholic Beverages Bill. The bill is calling for the restriction of advertisement of the alcoholic beverages, prohibitions of sponsorship and promotion associated with alcoholic beverages.
- 1.6.2 It is proposed that a government-managed fund responsible for combating alcohol abuse be established. The industry will continue to contribute a percentage to a fund, which will be held in trust by the NLA to fund activities to combat alcohol abuse and associated ills. The percentage to be contributed should be determined by the Minister of Trade and Industry after consultation. The state will have direct oversight and control over the activities to be implemented. This fund can assist a government agency established for purposes of combating abuse or alternatively fund existing structures through an application process;
- 1.6.3 It is proposed that liability for manufacturers and suppliers be introduced to ensure that they take responsibility not to supply their products to unlicensed traders. In respect to retailers, in line with the agreed norms and standards, traders should not serve liquor products to already intoxicated persons. Should that happen and the intoxicated person is involved in a motor accidents or crime related to substance abuse, the manufacturer, distributor and trader should bear liability for any harm or damages;
- 1.6.4 To reduce the harmful use of alcohol, it is also important to regulate the availability of alcohol. 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 and sales of liquor in zoned areas. 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 both national, provincial and municipal legislation;

- 1.6.5 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. 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;
- 1.6.6 In order to standardise licensing requirements, it is proposed that liquor premises be located at least five hundred meters (500m) away from schools, places of worship; recreation facilities, rehabilitation or treatment centers, residential areas and public institutions. Further, no liquor licenses 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. If such a license is already issued it should be terminated within a period of two years. This can be reviewed through norms and standards as may be required;
- 1.6.7 In order to enhance the impact, education and awareness must be included in the Act as part of the functions of the NLA and Department of Trade and Industry ("the dti"), and NLA be adequately capacitated to perform this function;
- 1.6.8 In order to provide speedy redress, it is proposed that an internal review mechanism 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;
- 1.6.9 To address the issue of transformation, it is proposed that NLA must be empowered to ensure that licensing conditions as articulated in the Broad- Based Black Economic Empowerment (BBBEE) Codes of Good Practice are imposed and strictly monitored. Non-compliance to the BBBEE Codes should result in the suspension or revocation of the license;

- 1.6.10 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 ("NLPC") for harmonization 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;
- 1.6.11 To standardise regulatory enforcement and ensure collaboration within the three spheres of government, national, provincial and local departments 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), South African Revenue Service (SARS), Department of Agriculture, Forestry and Fisheries (DAFF), Department of Health (Health), provincial as well as municipal inspectorates, subject to adherence to all relevant governing legislation. Therefore, there is a need for a coordinated training programme for inspectors and the dti should take the lead on this matter;
- 1.6.12 In order to enhance capacity within the transformed NLA and provincial liquor authorities, it is proposed that provision be made for SAPS officials 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;
- 1.6.13 The norms and standards as adopted by the NLPC 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;
- 1.6.14 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. Further, consumer awareness need to be intensified;

1.6.15 For more effectiveness in regulating macro manufacturers and distributors, it is proposed that NLA be repositioned to become a trading entity of the dti with more capacity to deal with issues of compliance, education and awareness, enforcement, registration, reviews and the administration of the envisaged government managed trust fund; and

1.6.16 To improve the effectiveness of NLPC, it is proposed that the NLPC be empowered to take binding decisions if there is no quorum in the first meeting and the same happens in the next meeting.

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 that was going 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 NLPC 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 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. To this end, the Department of Health has developed a draft Control of the Marketing of Alcohol Beverages Bill which has been deliberated upon in the IMC. The bill calls for the restriction of advertising of alcoholic beverages and prohibition of sponsorship and promotion of alcoholic beverages.
- 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 NLPC, 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 still 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 ("MRC"), South Africans consume about 5 billion litres of alcoholic beverages per year. The World Health Organisation(WHO) estimated the costs of alcohol abuse in South Africa to be \$1.7 billion (R19, 0729, 000.00)and 2% of South Africa's GDP in 2004.
- 3.4.1.2 Foetal Alcohol Syndrome ("FAS") has also reached endemic proportions in some parts of the country. In a research conducted in the Western Cape (Wellington), the prevalence of FAS among grade 1 scholars was found to be 41-46 per 1000 in 1997, rising to 65-74 per 1000 in 1999.
- 3.4.1.3 The anti-abuse provisions in the Act rely heavily on the implementation of anti-abuse programs 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 a matter for consideration.

- 3.4.1.4 In view of the above, Government should use an arsenal of approaches in order to combat 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. Common enterprises continue to dominate the liquor landscape. There has however been a significant increase of distribution licenses, mostly due to the requirement that each distribution premises should hold its own license. Despite this substantial increase in the number of distribution licenses 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 reflect that the industry remains highly un-transformed 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 BBBEE 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 that does not contribute to the mainstream economy 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 and liquor, including concoctions, which are also a health hazard.

### **3.4.5 Capacity and enforcement constraints within the NLA**

- 3.4.5.1 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 licenses issued for manufacturing and distribution value chains.
- 3.4.5.2 The NLA must be capacitated to deal effectively with issues of compliance, education and awareness, enforcement, and registration.

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

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 minimize costs to the state and industry.

### 3.4.7 **Ensuring an effective NLPC**

3.4.7.1 NLPC is a coordinating structure to facilitate cooperative governance in the Act. A NLPC 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 NLPC 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 According to Matzopoulos (2003) in this country, a high proportion (46%) of mortality cases due to non-natural causes have had blood alcohol levels greater or equal to 0.05g/100ml, the legal limit for driving. Further, research conducted in three large port cities in South Africa in 2001, found that 39% of trauma patients had breath alcohol concentrations greater or equal to 0.05g/100ml (Plüddemann et al).
- 4.1.1.3 Alcohol abuse entails enormous costs to the public sector including health costs; police, court and penal system costs. The WHO estimated the costs of alcohol abuse in South Africa to be \$1.7 billion (R19, 0729, 000.00) which was 2% of South Africa's GDP in 2004. At the time this was almost three times the amount of excise tax received by government from the liquor industry.
- 4.1.1.4 Roughly a quarter to a third of all hospital admissions is said to be directly or indirectly related to alcohol. Liquor 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.
- 4.1.1.5 Further, 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.



- 4.1.1.6 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. The reasons for increased consumption include high levels of unemployment as well as a lack of recreational facilities to cater for social needs.
- 4.1.1.7 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.
- 4.1.1.8 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.
- 4.1.1.9 These two aspects lead to the argument whether or not the minimum age of drinking and or consumption has a bearing with alcohol consumption and alcohol-related problems. In this regard governments have passed policies and laws to regulate who can drink and buy alcohol. This is commonly referred to as consumption and or purchase.
- 4.1.1.10 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 drinking age at United State, 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.
- 4.1.1.11 However, it is suasive to conclude that the minimum drinking age above or in combination with other factors have a deterrent effect in consumption and or purchase of liquor.
- 4.1.1.12 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. A study in Denmark where a minimum 15 year age limit was introduced for off-premise purchases found that there was an effect in reducing teenagers' drinking including the drinking of the above (15 years) as well as below the age limit was affected.

- 4.1.1.13 From the above, it is clear that age limit 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.
- 4.1.1.14 In view of the above, it is recommended that the age limit of 21 should be imposed as an attempt to curb the rampant drinking patterns by the youth. This age restriction will pass the constitutional test as other countries are also doing this.
- 4.1.1.15 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.
- 4.1.1.16 Currently, liquor manufacturers are required to undertake anti-abuse programs 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, 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 are not evidence-based and cannot be evaluated.
- 4.1.1.17 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. 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.

4.1.1.18 A major failure has also been that the Act provides little or no guidance on how the NLA should assess whether the proposed interventions are sufficient to meet with registration requirements. As a result, little is done by the NLA to ensure that such programs are appropriately designed to proportionately address the burden, in an evidence-based manner.

4.1.1.19 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.

4.1.1.20 The following recommendations will assist in addressing the socio-economic impact of liquor:

4.1.1.20.1 The Minister of Trade and Industry must be empowered through amendment to Section 9 (advertising restrictions) of the Act to determine the restrictions and parameters for advertising and marketing of liquor products, subject to the outcome of the Control of Marketing of Alcoholic Beverages Bill. The bill is calling for the restriction of advertisement of the alcoholic beverages, prohibitions of sponsorship and promotion associated with alcoholic beverages. The Bill is currently still under consideration. This recommendation will provide flexibility of setting parameters and restrictions in a manner guided by the extent of the problem faced.

4.1.1.20.2 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. If such a license is already issued it should be terminated within a period of two years. This can be reviewed through NLPC norms and standards as may be required, also taking into account informed

and reasonable intervention in addressing existing licensed or registered premises.

- 4.1.1.20.3 Manufacturers and suppliers have a responsibility to ensure that liquor products are not supplied to unlicensed traders. Liability should therefore be placed on the manufacturer or supplier if its products are found in illegal or unlicensed outlets. In respect to retailers, in line with the agreed norms and standards, traders should not serve liquor products to already intoxicated persons. Should that happen and the intoxicated person is involved in motor accidents or crime related to substance abuse, the manufacturer, distributor and trader should bear liability for any harm or damages.
- 4.1.1.20.4 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.
- 4.1.1.20.5 Review of the national minimum legal drinking age from 18 to 21 years. 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.
- 4.1.1.20.6 A government-managed fund responsible for alcohol abuse should be established. The industry will continue to contribute a percentage to a fund, which will be held in trust by the NLA to fund activities to combat alcohol abuse and associated ills. The percentage to be contributed will be determined by the Minister of Trade and Industry after consultation. The state should have direct oversight and control over the activities to be implemented. This fund can assist

a government agency established for purposes of combating abuse or alternatively fund existing structures through an application process.

4.1.1.20.7 Amendment of the Act to appropriately provide for education, awareness and capacity building initiatives as part of the functions of the NLA should be effected, and it is proposed that provincial liquor authorities also adequately provide for this function within their mandate.

4.1.1.20.8 The 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 BBBEE Codes of Good Practice, which shall assist in guiding the BBBEE requirements for applicants. It is recommended that the NLA should therefore be empowered to impose allowed registration conditions as articulated in the amended BBBEE Codes of Good practice and implement strict monitoring measures. Non-compliance to the BBBEE Codes should result in the suspension or revocation of the registration certificate. The provinces may 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 NLPC in the published national norms and standards. These legislations should also be in line with municipal by-laws for regulating the liquor industry. The NLPC 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 specified period of being requested to do so may result in termination 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 NLA, Municipalities, DAFF, SARS, SAPS, Health) 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 Research indicates that the production of illegal liquor is influenced by an intention to evade excise duty. 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, lower excise rates on wine and the lacuna that currently exists in the content of ales is making the illicit market thrive.

- 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, consumer awareness needs to be intensified.

#### **4.5. Capacity and enforcement constraints within NLA**

- 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, licensing, education and enforcement.
- 4.5.2. 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.
- 4.5.3. 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. Obviously at the expense of the fiscus, creating illegal competition for licensed traders and enormously contributing to the socio-economic costs of liquor abuse in the country and many other health concerns.

- 4.5.4. 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 be a trading entity of **the dti** with more capacity to deal with issues of compliance, education and awareness, enforcement, registration, reviews and the administration of the envisaged government managed trust fund. Governance of the NLA as trading entity will be in line with the PFMA regulations issued by the Treasury.
- 4.5.5. 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 NLA. In this regard the head of the NLA 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 NLA. If the applicant is still aggrieved after this process they may approach the court of law for relieve.
- 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 NLPC**

- 4.7.1. The NLPC consists of the MECs responsible for liquor in each province and the Minister of Trade and Industry who chairs the NLPC and has a casting vote. The NLPC

meeting quorate when the Minister of Trade and Industry and five (5) MECs are present.

- 4.7.2. The NLPC'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 liquor industry in the South Africa.
- 4.7.3. The inability to secure quorum to NLPC meetings has resulted in the cancellation of numerous meetings in the past, a situation that has delayed the finalisation of numerous NLPC matters. It is hence necessary to enact legislative measures that make it easy for the NLPC 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 NLPC, it is proposed that the NLPC be empowered to take binding decisions if there is no quorum in the first meeting and the same happens in the next meeting.
- 4.7.5. The NLPC's secretariat should also be enhanced to effectively monitor the working of the NLPC.

## **6. CONCLUSION**

- 6.1. It is proposed that the recommendations as outlined in the discussion be accepted and used as a basis for consultation with the stakeholders at the NLPC. It is submitted that if the policy recommendations are followed, most challenges that currently face the regulation of liquor will be addressed.
- 6.2. The policy proposals made 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.

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