The Department of Trade and Industry (the DTI) published the National Liquor Policy (the NLP) in the Government Gazette on 20 May 2015, and invited the public and relevant stakeholders to submit their comments to the DTI by 30 May 2015.

The NLP envisaged an overhaul of existing liquor policy, affected through extensive amendments to the Liquor Act 59 of 2003. The DTI, in reviewing current policy, identified the following challenges in the liquor industry:

- The slow pace of transformation.
- Standardisation of key aspects of regulation and improved regulatory collaboration.
- Eradicating manufacturing of and trading in illegal or illicit alcohol.

These challenges were attributed to the conduct of the liquor industry, societal behaviour towards liquor, and loopholes in the current legislation. The proposed amendments have been criticised by various stakeholders due to their potentially far-reaching socio-economic consequences for, among others, formal and informal liquor trade. These are the most controversial of the proposed amendments:

- The Minister of Trade and Industry is to be given the power to determine the restrictions and parameters for advertising and marketing of liquor products, including restrictions on advertising alcoholic beverages, prohibitions of sponsorship and promotion of alcoholic beverages.
- Liability accrues to manufacturers, distributors and traders for any harm or damages caused by intoxicated persons, such as motor accidents, while under the influence of alcohol.
- Reduction of the availability of alcohol by restricting the days and hours when liquor sales should be permitted.
- Raising the national minimum legal age at which alcohol can be purchased and consumed from 18 to 21 years of age.
- Location of liquor premises must be at least 500 metres from, most notably, schools, places of worship, recreation facilities, residential areas and public institutions. Furthermore, no
licor licences shall be issued to premises near public transport, and areas not classified for
entertainment or zoned by municipalities for trading in liquor. If such a licence has already
been issued it should be terminated within two years.

An assessment of the viability of the proposed amendments requires an investigation into the
impact on liquor trade, both formal and informal, and the consideration of factors such as the
impact on the South African economy and the interests of South Africans who elect to consume
alcohol responsibly.

The NLP recognises that the liquor industry, previously regulated by the Liquor Act (27 of 1989),
is characterised by disparities informed by the historical legacies of South Africa. This resulted in
the creation of a large informal liquor sector comprising unlicensed liquor outlets. Simply put,
the primary aim of liquor legislation was the economic benefit to the liquor industry, without
consideration being given to the harmful effects of liquor trade in disadvantaged sectors of
society.

The promulgation of the Liquor Act (59 of 2003) (the current Act) recognised a shift in
government’s approach to the industry, balancing the broader economic benefits of liquor trade
with the harmful effects of liquor consumption in disadvantaged sectors of society.

Nearly 13 years after the promulgation of the current Act, the consumption of alcohol in the
informal market exceeds that of its formal counterpart. This is despite numerous policy
considerations centred on its dissolution, and promotion of regulations within the industry,
aimed at eliminating illicit liquor trade and the associated abuse and social ramifications. The
current Act reflects the transformation of the liquor industry to date. It addresses the key issues
surrounding the socio-economic effects of liquor abuse, and creates a framework for the
regulation of liquor manufacturing and distribution within the country. However, the challenge
faced by provincial departments to balance the economic viability against the abuse associated
with over-consumption of liquor, is still prevalent, despite legislative intervention.

This article focuses on the proposed amendments that have the most far-reaching
consequences.

**Empowering the Minister of Trade and Industry to restrict advertising and marketing of
liquor products**

Conferring the power to determine restrictions for advertising and marketing liquor products to
the Minister, who fulfils a legislative function, is breach of the doctrine of separation of powers.
In particular, it is a breach of the non-delegation doctrine, and creates a legislative foundation for
the abuse of authority.

**Raising minimum age for consumption of liquor from 18 years to 21 years**

It is proposed that the national minimum age at which alcohol can be consumed and
purchased should be raised from 18 to 21 years. If enacted, this would require manufacturers and suppliers of liquor to actively take measures to verify the age of customers, such as requesting a recognised form of identification. Further, the penalty for non-compliance and infringement of the provision will need to be determined. This would increase the burden faced by our courts and add to challenges our prisons already face with regard to capacity, if imprisonment is determined to be the penalty.

The Free Market Foundation (FMF) has noted the various concerns. Among these grievances are that in an attempt to eliminate the social impact of alcohol abuse, there will be an adverse result, underage drinking will become a more common occurrence in uncontrolled and consequently more dangerous environments. It is difficult to comprehend that an 18-year old is deemed sufficiently "mature" to be legally married, vote, choose a career path and drive, but not enjoy a social drink in a controlled environment.

The FMF went so far as to allude to the fact that the proposals contained in the NLP amount to the Act reverting to the legacies of discrimination contained in the 1989 Liquor Act. Further, the FMF’s research does not reinforce the DTI’s view that liquor abuse is the root cause of violence, rape and crime in society. Although it remains a contributing factor, the increase in the legal drinking age will not sufficiently decrease these societal evils enough to justify its implementation.

It is arguable, therefore, that the solution to challenges identified by the DTI does not lie in increasing the legal drinking age, and is likely to create adverse effects rather than positive attributes, both socially and economically.

**Restriction on the location of liquor premises**

The proposal regarding the location of liquor premises at least 500 metres from schools, places of worship, recreation facilities, rehabilitation or treatment centres, residential areas and public institutions is, at best, an extreme measure that would require considerable resources to be expended by government to ensure enforcement. This would including promulgation of regulatory policy, to make certain liquor traders comply. Of particular concern is the proposed ban on liquor trade in areas not classified for entertainment or zoned by municipalities for trading in liquor. In effect, this would result in a blanket ban on liquor trade in informal settlements or locations, which historically do not have town planning schemes and where property is not “zoned“ for business purposes.

Aside from the glaring discrimination it poses to consumers from disadvantaged sectors of society, the consequences of a blanket ban on the liquor trade would be detrimental to the informal liquor trade industry, which exceeds the formal liquor trade industry in South Africa. Informal trade offers individuals who would otherwise be unable to obtain employment in the formal sector an opportunity to engage in economic activity and generate income. At grassroots
level, it would result in the criminalisation of a viable source of income. The liquor trade industry operates in diverse social and economic climates. The successful implementation of any proposed legislation centres on its ability to recognise existing social and economic disparities and work for the betterment of each sector.

In formulating policy on liquor trade, consideration must be given to the plight of informal liquor traders with a view to bridging the socio-economic gap between these two sectors and assisting migration to the latter.

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