

THE ALCOHOLIC DRINKS CONTROL ACT AND ITS IMPACT ON THE HOSPITALITY INDUSTRY

BACKGROUND TO THE ENACTMENT

A study by National Agency for the Campaign Against Drug Abuse Authority (NACADA)in 2007 revealed that:

- nationally 13% of the population currently consumes alcohol, and that illicit brews and second generation alcohol including chang'aa are consumed by over 15% of 15–64 year olds.
- alcohol abuse is responsible for a wide variety of harmful effects that Kenyans are exposed to ranging from failing health to diminished productivity, social disharmony, exposure to HIV/STIs infections and traffic accidents, among others.
- Increase in the number of alcoholic drinks selling outlets especially in urban residential areas, in or near learning institutions, in supermarkets and convenience stores, and in rural villages;
- Easy accessibility to and excessive consumption of alcohol even by persons under 18 years;
- Increase in adulterated alcoholic drinks and illicit brews leading to deaths and injury;
- Aggressive marketing, promotion of alcoholic drinks especially with messages targeting young people and sponsorship of events for persons below the age of 18 years by the alcoholic drinks industry.

The above concerns informed the need to develop legislation, Alcoholic Drinks Control Act 2010, that would address the entire spectrum of the alcoholic drinks industry from production to consumption.

Alcoholic Drinks Control Act, 2010

The Alcoholic Drinks Control Act, 2010 come into operation on 22nd November, 2010 repealing:

➤ The Chang'aa Prohibition Act (Cap 70); and

➤ The Liquor Licensing Act (Cap 121)

- The objective of the Act is to provide a law for the control of production, manufacture, sale, labelling, promotion, sponsorship and consumption of alcoholic drinks in order to:
 - (a) Protect the health of individuals
 - (b) Protect the consumers of alcoholic drinks from misleading and deceptive inducements
 - (c) Protect the health of persons under the age of 18 years
 - (d) Inform and educate the public on health effects of alcohol abuse
 - (e) Adopt and implement measures to eliminate illicit trade in alcohol like smuggling
 - (f) Promote and provide for treatment and rehabilitation programmes
 - (g) Promote research and dissemination of relevant information.



GENERAL REQUIREMENTS FOR ALCOHOLIC DRINKS

- The legalising of *chang'aa* and its manufacture to conform to prescribed standards. *The government through advice of the relevant agency shall develop standards for the manufacture of chang'aa that shall be followed. This will ensure that the drink is safe for human consumption.*
- The labelling of alcoholic drinks to differentiate between sales for local consumption and for export to eradicate smuggling of alcoholic drinks into and out of the country.
- The prohibition selling of alcoholic drinks to persons under the age of 18 years. Failure to adhere leads to fine of Kshs. 150,000 or 12 months imprisonment or both.
- For the displaying of signs at visible places to inform the public that alcoholic drink are not sold to persons below the age of 18 years.
- The prohibition of sale of alcoholic drinks by way of automatic vending machine. Since the machines are not manned, it would be hard to prevent the young people from accessing alcoholic drinks.
- The prohibition of sale of alcoholic drinks in sachets or in a container less than 250 ml. This is aimed at limiting the young people from accessing alcoholic drinks since selling in sachets makes easy for them to purchase the drinks.
- Mandatory warning labels on information and potential health hazard as well as statement as to the constituents of the alcoholic drink. Such health warnings and messages include: excessive alcohol consumption is harmful to your health, excessive alcohol consumption can cause liver cirrhosis (liver disease) and not for sale to persons under the age of 18 years.

LICENSING

1. Anyone intending to manufacture, sell, import or export alcoholic drinks will be required to apply for a license under the Act.
2. The District Alcoholic Drinks Regulation Committee to issue licences under the Act, inspect licensed premises and any other assigned function. The Committees will replace the current Liquor Licensing Courts and shall be established in every district.
3. District Committee is composed of District Commissioner (DC) who is the chairperson, District Medical Officer of Health, Officer Commanding Police Division (OCPD), District Environmental Officer, Local Authority representative, 3 residents appointed by Minister and one person designated by the relevant agency who is the secretary.
4. Persons seeking to manufacture or sell alcoholic beverages in a locality must apply for licence from the District Committee. District Committee informs public or residents of any applications and invites for any objection

LICENSING cont..

5. District Committee will not grant any new licence for sale of alcoholic drinks unless it is satisfied that it would be in public interest to grant the licence and that the number of such premises in the locality is insufficient for the locality given the population density per square kilometre and permitted maximum number of such premises as prescribed. This will help to limit the number of alcoholic drinks selling premises which have been on the increase resulting in alcohol abuse.
6. No licensing of alcoholic drinks selling outlets in institutions of basic education and within a radius of 300 metres from any schools or learning institution for persons below the age of 18 years and in supermarket and retail chain outlets unless alcoholic drink selling area is not accessible by persons below the age of 18 years. This will protect children from easily accessible and available alcoholic drinks that are currently not controlled.
7. The three types of licenses to be granted under the Act are brewers, wholesale and retail licences. These are still the licenses currently being granted under the Liquor Licensing Act.
8. The owner or manager or employee of alcoholic drinks selling premises is permitted to eject drunk and disorderly patrons from premises. The owner or manager or employee of alcoholic drinks selling premises who allows drunkenness leading to violence within premises commits an offence
9. The owner of alcoholic drinks selling premises not to allow persons below the age of 18 years to access an area where alcoholic drink is manufactured, stored or consumed .
10. District Committee may refuse to renew licenses on established grounds such as criminal record and failure to adhere to requirements under the license.

SALE & CONSUMPTION OF ALCOHOLIC DRINKS

It provides that:-

1. Drunkenness and being disorderly in public is outlawed and attracts a fine of Kshs. 500.
2. Selling to an already intoxicated person or encouraging the person to consume alcoholic drink is an offence.
3. Sale contrary to the Act attracts a fine of Kshs. 3,000.
4. Selling an adulterated drink or a non-alcoholic drink which is adulterated with alcohol is outlawed and attracts a fine of Kshs. 10,000,000.

PROMOTION

It prohibits promotion of an alcoholic drink except as prescribed in law.

- It prohibits promotion of an alcoholic drink by means that are misleading or deceptive, or that are likely to create an erroneous impression about characteristics, health effects, health hazards or social effects of an alcoholic drink.
- It prohibits publishing, broadcasting or dissemination of any prohibited promotion under the Act.
- It prohibits promotion of an alcoholic drink so as to create the false impression that:
 - (a) A link exists between consumption of that drink and social or sexual behaviour;
 - (b) Consumption of that drink is acceptable before or while driving, operating machinery, sports or other activities that require concentration in order to be carried out safely;
 - (c) The alcoholic drink has therapeutic value or that it has ability to prevent, treat or cure any human disease;
 - (d) It is wrong or foolish to refuse to drink.

Powers of the Minister

The Minister is given power under the Act to make regulations (further rules to specify some issues in the law) to lay down rules for such issues as:

- a) Hours within which the sale of alcoholic drinks shall be permitted
- b) Substances to be declared as harmful constituents of alcoholic drinks
- c) Prohibit the addition or use of any harmful constituent or ingredient in the production of alcoholic drinks
- d) Control the labelling, packaging, sale or distribution of alcoholic drinks.

Powers of the Minister cont..

The Minister of State for Provincial Administration and Internal Security gazetted the Alcoholic Drinks Control (Licensing) Regulations 2010 vide Legal Notice No. 206 of 17th December 2010

Impact of the legislation

General observation

The restriction as to the hours during which alcoholic drinks can be served (from 5pm on week days and 2pm on Saturdays) is seriously misguided and probably counter-productive.

Prohibition was a disaster in the United States in the 1920's and 30's and restricted drinking hours have been dropped in many countries because they lead to 'binge drinking' (i.e., you've got two or three hours to have a drink so drink quickly).

Impact of the legislation

- ***Section 12-The District Committee shall not grant a new license for sale of alcoholic drink to be consumed on the premises unless the District Committee is satisfied
(c) that the premises in respect of which the application is made are located at least three hundred meters from any nursery, primary, secondary or other learning institutions for persons under the age of eighteen years.***

Industry Concerns:

- We have existing responsible tourism and entertainment establishments that are within 300 meters of educational institutions and have had no effect on the social and moral values and quality of education received in the said institutions.
- Industry is concerned that there lies very little difference between bar that is situated 290 meters away and one that is situated 320 meters from an educational institution.
- This begs the question of who will be moved in instances that an educational institution and an establishment selling alcohol are within 300 meters of each other and have co-existed for a time before the law was in place.

Impact of the legislation

Section 23 – Debt from sale of alcoholic drinks

No suit shall be maintainable to recover any debt alleged to be due in respect of the sale of any alcoholic drink which was delivered for consumption on the premises where it was sold unless it was sold for consumption with a meal supplied at the time of sale or unless the person to whom it was sold or supplied was at the time of the sale a lodger on such premises.

Industry concern:

Members only clubs may no longer allow members to sign for bill because this section clearly indicates that they cannot take legal action against members who refuse to pay their bills unless the meals were served with drinks.

Impact of the legislation cont..

Section 24 - Access by persons under age of 18 (1) states that No person holding a license to manufacture, store or consume alcoholic drinks under this Act shall allow a person under the age of eighteen years to enter or gain access to the area in which the alcoholic drink is manufactured, stored or consumed.

Industry Concerns:

- This section of the law seeks to fill in the responsible parenting gap that exists in some families but in the process discriminates / punishes business people and consumers of alcoholic drinks whether they are parents or not.
- Kenya is a leisure and family holiday destination of choice, entertainment in Kenya is also one of the fastest growing sectors and employs hundreds of thousands of youth. Restaurants serving families will not be allowed to sell or store alcohol in their restaurants whether the clients consuming the alcohol have children with them or not.
- Mini bars in rooms will need to be removed or only stocked with alcohol once a room has been established not to be having children.
- Serving of alcoholic drinks in flight or on cruises will not be allowed as long as there are persons under 18 on the flight or cruise
- At outside catering events, champagne breakfasts, bush dinners, picnics and at the beach, access to children is difficult to control

Impact of the legislation cont..

- **Section 38**

(1) No person shall keep for sale, offer for sale or sell-

(a) any alcoholic drink which has been in any way adulterated, or diluted by any person;

(b) any non alcoholic drink which has been in any way adulterated with alcohol, or which contains any of the substances prohibited by the Minister under section 68.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding ten million Kenya shillings or to imprisonment for a term not exceeding ten years, or to both.

Industry Concerns:

- Cocktails which are popular drinks are made by mixing both alcoholic and non alcoholic drinks
- There are meals and deserts that are made with alcohol as an ingredient.
- The wording of the law needs to be changed to reflect the intentions which was to protect the citizenry from illicit alcohol and that which has been mixed with harmful substances

Impact of the legislation cont..

Section 50

- (1) The Minister shall, upon recommendation by the respective District Committee, appoint for each district, any person or class of persons to be authorized officers for purposes of this Act.***
- (2) The Minister shall issue a certificate of appointment to every person appointed under this section.***
- (3) Notwithstanding the provisions of this section, the following officers shall be deemed to be authorized officers for the purposes of this Act-***
 - (a) Public Health officers appointed under the Public Health Act; and***
 - (b) Any other person upon whom any written law vests functions of the maintenance of law and order***

Industry Concern:

- Public Health officers who currently have not undergone any training on this law and what to look out for and Police Officers, City Council Officers and all others that are charged with the maintenance of law and order either by central government or local authorities are free to walk into premises and harass business people and customers under the guise of implementing the law.

CONCLUSION

- The introduction of controls into the alcohol industry is a welcome step forward, yet it is clear that the hospitality industry is reeling under certain provisions of the new law.



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*"In these troubled times, I thank God there's still
one barrel left we can afford."*

THANK YOU.