



REGULATIONS IN TERMS OF THE EASTERN CAPE
LIQUOR ACT, 10 OF 2003 PUBLISHED IN THE
PROVINCIAL GAZETTE ON 15 MARCH 2024
COMMENTARY TO DEPARTMENT OF ECONOMIC DEVELOPMENT,
ENVIRONMENTAL AFFAIRS & TOURISM

1 INTRODUCTION

- 1.1 The comments reflected herein are required to be submitted to the Department of Economic Development, Environmental Affairs and Tourism by 15 May 2024.
- 1.2 The proposed new regulations were published in Provincial Gazette dated 15 March 2024 and comment was required within 60 (sixty) days of such publication.
- 1.3 Apart from such publication, as far as can be ascertained there has been no other form of consultation with interested parties either in the form of meetings or workshops by the Department.
- 1.4 BLC Attorneys represents approximately 500 (five hundred) registered persons selling liquor for retail purposes in the Eastern Cape Province registered in terms of the Eastern Cape Liquor Act 10 of 2003 (the “Liquor Act”).

- 1.5 Such clients were circulated via a bulk email with the request to provide input. Certain clients provided input which is reflected in the summary forming part of the commentary.
- 1.6 Feedback from clients reflect a common theme that BLC Attorneys, being experienced in the area of Liquor Legislation for the past 35 (thirty five) years, utilise their specialized knowledge to provide the commentary as detailed herein.
- 1.7 The intention of the aspects detailed in this commentary are intended to be constructive with an invitation extended to the Department to engage further in aspects.

2 PURPOSE OF REGULATIONS

- 2.1 Regulations constitute legislation complementing the provisions of contained in the complimentary Act dealing with the same subject matter.
- 2.2 In this instance the enabling legislation is the Eastern Cape Liquor Act 10 of 2003 (“the Act”).
- 2.3 The proposed Regulations seek to replace the existing Regulations subservient to the provisions of the Act.
- 2.4 In simplistic terms, the purpose of an Act is to provide a mechanism as to “what” is required insofar as liquor legislation is concerned whereas the purpose of Regulations is to provide details as to “how” such Act is to be implemented from a functional perspective.
- 2.5 The above differentiation is crucial to ensure that the functions are constrained and applied correctly. Unfortunately the Liquor Act is somewhat compromised where content therein refers to the “how” in some instances.

3 DEFINITIONS

- 3.1 “Close proximity” is defined as a radius of 500 (five hundred) metres from a proposed outlet. The definition is not utilised in the Regulations and instead there is specific reference to the radius in the content section of the Regulations. ‘Close Proximity’ needs to replace instances where the distance is reflected.
- 3.2 A place of worship needs to be defined – and such definition must restrict the amenity as one where a congregation meets in a church.

4 APPLICATION FOR REGISTRATION, TRANSFER, REMOVAL OF REGISTRATION, MICRO-MANUFACTURING AND SPECIAL EVENT

- 4.1 It is not understood what is meant by the reference to “Executive Directors” when reference to a legal entity.
- 4.2 Rather than acquire details relating to Directors, provision should be made for “shareholders or members” to provide certified copies of their Identity Documents.
- 4.3 In the case of a Trust, instead of providing certified documentation of Trustees who manage a Trust, the Regulations should require certified copies of the Beneficiaries of a Trust who are the parties that hold a financial interest in a Registered Person.
- 4.4 The requirement that a municipal approved building plan accompany the application at the time of lodgement is unduly onerous in many instances. By way of one example, an Applicant relating to a shopping centre will be required to obtain such plan from the owner of the centre. Approved building plans in such instances are usually large and constitute more than one plan as such. The provision of such plans are entirely irrelevant to an Applicant leasing a single line shop in the shopping centre

and intending to utilise such premises to operate in terms of a registration under the Liquor Act.

- 4.5 The current provisions as contained in the current Regulations should be retained. Furthermore, where alterations are required in respect of proposed registered premises, there is a practical reality that plan submissions are often delayed by municipalities in the Province and owners only receive final approval in instances where the alterations relating thereto have already been completed. Delays are experienced with recordal and micro-filming of plans by Municipalities before releasing them to the owner.
- 4.6 It is not understood what is meant by reference to a “separate entrance door” and an “accessible exit door”. In certain instances, the provision of an exit door may not be accommodated in terms of the premises for which application is being made.
- 4.7 The use of the prescribed Form 3 to detail the description of the premises is unduly restrictive. In particular, it refers to 2 (two) ablution facilities being required as a minimum. Further one must cater for persons with disabilities. This is contradictory to the provisions of the Act relating to the requirement to establish adequate toilet facilities. By way of example, an application to establish a retail liquor store invariably relate to retail premises reflecting a single toilet for use by staff which complies with building legislative requirements. Accordingly, the description of the premises can simply refer to the aspects as contained in existing Regulations with the suggested inclusion of the words “and adequate toilet facilities”.
- 4.8 The use of Form 4 of Annexure 2 relating to comprehensive written representations is unduly restrictive and simplistic. In fact, it could be argued that the content thereof does not constitute “*comprehensive written representations*”.
- 4.9 Both Forms 3 and 4 reflect content more suited to an individual applying for a tavern as opposed other more “sophisticated” applications made to the Liquor Board. The Eastern Cape Liquor Board (“the ECLB”) should be in a position, when considering an application, to leave the onus of filing “comprehensive written representations” on the Applicant .

- 4.10 The requirement to serve Form 6 on the Governing Body of every educational institution or a place of worship within a radius of 500 (five hundred) metres of the proposed premises is unduly onerous and impractical. The current radius of 100 (one hundred) metres was part of the 1989 Liquor legislation and subsequently incorporated into all Provincial Liquor Acts and has adequately served to protect the interests of the aforementioned institutions. As pointed out, a “place of worship” has not been defined and on the assumption that it will be defined, should clearly reflect as a place of worship where congregants meet for the purposes of holding religious services. The reason for this is that “traditional” churches are now far outnumbered by “charismatic new age “ churches that have established themselves in retail and commercial areas from which they conduct their activities. By way of example, in East London in the city centre off Oxford Street there are a number of “churches” conducting activities in small retail spaces without any semblance or form of being a “place of worship”.
- 4.11 The reference to a Title Deed and Deed of Transfer are one and the same. The requirement that the distinction between the requirements for a Registered Owner and a lessee are unnecessary. Practically, all that is required is that a right of occupation be established in the application either in the form of a Lease concluded between the applicant and the owner of the property together with a Deeds Office Inquiry extract from the applicable Deeds Office reflecting the landlord as the owner of the property. Alternatively, in the event of an application being made by the registered owner of immovable property, such Deeds Office printout will confirm that the applicant is the owner of the property. In many instances, Title Deeds/Deeds of Transfer are not readily available and capable of being produced by registered owners in those instances where such properties are mortgaged. The Title Deeds/Deed of Transfers are held by mortgagees in their security departments and the acquiring of a copy thereof can, instances, result in a delay. Furthermore, there is additional cost in those instances where a registered owner seeks a duplicate copy of a Title Deed/Deed of Transfer from the Deeds Office.

- 4.12 The further requirement that it be established that there is no restriction prohibiting the sale of liquor at the immovable property is also impractical. A Title Deed/Deed of Transfer itself will not, in most instances, served to establish whether such a condition exists as there is specific reference to prior conditions not reflected in the Deed. In the Eastern Cape Province there are restrictive Title Deed conditions pertaining to liquor which are confined to certain areas of Gqeberha and the town of Kirkwood. In both instances, the restrictive conditions were imposed many years ago by persons or entities seeking to either address the *mores* of the day, alternatively to prevent competitive trading in a defined area. Such conditions are outmoded in both respects. Any conflict pertaining to a liquor restrictive condition in a Title Deed serves to be dealt with by the respective property owners. By imposing a specific requirement relating to restrictions applicable to a property, the ECLB is potentially exposing itself to being mulcted into any civil actions regarding their role in the matter.
- 4.13 The requirement that a public school obtain prior written consent from the Head of the Department of Education of the Eastern Cape is entirely impractical. It has already been established that in instances where schools have made application for registrations, the Head of the Department of Education of the Eastern Cape will not provide written consent. The reasons therefor are sound and valid being based on the fact that the Head of Department is not involved in the application process approving registrations. The application and information contained therein, objects etc are before the ECLB solely to consider and finalise the application before it. This aspect has been addressed by way of correspondence between ECLB and the Department of Education and the provision falls to be removed from the proposed Regulations.
- 4.14 Likewise, the provision relating to the requirement that written proof of approval be obtained from the relevant local municipality that the proposed premises comply with municipal business and building regulations needs to be removed. In general, municipalities across the Eastern Cape are largely dysfunctional and securing “written proof of approval” will, in most instances, prove practically impossible to obtain. Furthermore, in most instances the acquiring of a Retail Registration is but one of the legal requirements which an applicant must acquire in respect of establishing a

business registered in terms of liquor legislation. Other related aspects require an applicant to deal with the municipality. In most instances such processes invariably are either run concurrently or addressed pursuant to the applicant being successful in acquiring a Retail Registration. Invariably, the starting point relating to an applicant comprises the application relating to the Retail Registration and thereafter, either concurrently or subsequently obtaining the other necessary approvals in order to operate the proposed business in line with all regulatory requirements. By way of example, when establishing a restaurant in retail premises, an applicant currently receives a Certificate of Registration and then applies for a Business Licence 9 (due to food preparation implications) and a further Certificate of Acceptability in respect of its kitchen facilities. Such processes on the part of the municipality can play out for a period of some 6 (six) to 12 (twelve months) after completion of the premises and issue of a registration by the ECLB. It is pertinent to point out that in both instances the applicable legislation delegated to the municipality contains no time constraints imposed on the respective municipality as to when it should finalise an application to enable an applicant to comply with “Municipal Business Regulations”.

- 4.15 The same consideration applies to a Population Certificate which is issued by a local municipality.
- 4.16 By way of further submission all of the above aspects are redundant insofar as the application to the ECLB is concerned as the existing and proposed regulations require a Ward Councillor to file a copy of a report pertaining to any liquor application to the municipality in question. The purpose thereof is to inform the municipality of the application in question and enable the municipality to establish that the proposed business meets **all municipal legislative requirements**.
- 4.17 Again, the ECLB is cautioned against introducing requirements exclusively falling within the jurisdiction of a municipality and thereby assuming “joint” responsibility with the municipality.
- 4.18 More importantly, the reference to such additional onerous requirements will serve, in most instances, to cause severe financial prejudice to an applicant where such

applicant has, by way of example, entered into a Lease Agreement and is unable to lodge an application for registration until such time as the municipality has addressed its legislative aspects.

- 4.19 It is pointed out that an applicant's Tax registration status can be verified by agencies outside of the South African Revenue Services. Such confirmation of such status, whether directly from the South African Revenue Services or other agency, are available in electronic format and consequently the requirement that same be a "certified copy" is redundant. Consequently, the submission is that the provisions should simply provide that an applicant must submit proof to the ECLB that it is registered for income tax purposes with the South African Revenue Services.
- 4.20 The requirement that the relevant municipality "*consent*" in instances where the manufacturing of liquor is to take place is entirely redundant as the use of a property for the proposed purposes is regulated by Land Use Management Schemes where applicants are free to utilise such properties in line with the appropriate Zoning Scheme without requiring any "written consent" from the municipality. Similarly in certain instances where the Foodstuffs and Drugs Act legislation is applicable, it **may** be necessary to obtain a Certificate of Acceptability from a municipality charged with the administration of aspects under such legislation. Specifically in respect of certain instances pertaining to the manufacturing of liquor it is not required that such legislation be complied with.
- 4.21 It is stated that the requirements as contained apply to an initial application for registration, transfer application, removal application, micro-manufacturing and a special event.
- 4.22 It is submitted that it is entirely redundant for most of the criteria to apply to instances where a **transfer** of a registration is taking place. In the case of a transfer application, it is invariably the case that the sale of a business triggers such transfer application to comply with the provisions of the liquor legislation. In such instances certain aspects falling within the jurisdiction of the municipality are also required to be addressed such as the transfer and/or new application pertaining to a Business

Licence and/or a Certificate of Acceptability [Not that such aspects should form part of liquor regulations]. Certainly, there is no need for a transfer application to entail that a plan form part of such application as well as a description of the premises. The objective that a process should be as simplified and “business friendly” as possible should prevail without it being necessary for a prospective holder to effectively be required to undertake a process **precisely** in line of that required in the event of a **new** registration.

- 4.23 Similarly, the additional requirements relating to micro-manufacturing are not, in the majority, capable of being provided to the ECLB when an application is lodged. Such applications for registration are made by applicants, particularly micro-manufacturing applicants, in instances where premises have not been completed and which are required to be conditionally approved by the ECLB before investment of a substantial capital nature takes place in respect of the premises. Processes are initiated relating to intended products to be manufactured to the Department of Agriculture as well as preliminary application made to SARS for Customs and Excise purposes. Both are time-consuming aspects and there is no reason why the various processes cannot run simultaneously in conjunction with one another. Simply put, an applicant makes application to the ECLB while simultaneously forwarding a sample of its product to the Department of Agriculture for testing and certification purposes as well as initiating registration with Customs and Excise. The ECLB can then conditionally approve the application subject to imposing a condition that the applicant submits the documentation pertaining to the liquor it intends manufacturing and that it is registered with Customs and Excise.

5 SPECIAL EVENTS REGISTRATION

- 5.1 Regarding the proposals for Special Event Licences, the same aspects relating to an applicant is detailed in respect of new initial applications should be noted.
- 5.2 The words “floor layout” should be inserted before plan relating to proposed premises to reflect that the applicant provide a **floor layout** plan of the proposed premises.

- 5.3 The reference to doors both being that of an entrance door and exit door should be removed as in many instances the application for a Special Event relates to tents or temporary structures which are constructed and which do not have doors as a component thereof. The same applies to windows.
- 5.4 It is suggested that counters be removed and substituted by **places of liquor display** as referred to in the Act.
- 5.5 The Forms referred to are incorrect. It is reiterated that current provisions relating to description and comprehensive written representations as reflected in the existing regulations be retained.
- 5.6 Regarding a noise pollution exemption certificate, it is submitted that this should be qualified by the addition of the words “if required” as not all Special Events require such certificate.
- 5.7 A further study of the Safety at Sports and Recreation Events Act is required as certain Special Events may not require certification in terms of the legislation.

6 WARD COMMITTEES, GOVERNING BODIES OF EDUCATIONAL INSTITUTIONS AND PLACES OF WORSHIP AND PUBLIC CONSULTATIONS REGARDING AN APPLICATION FOR REGISTRATION, TRANSFER, REMOVAL AND MICRO-MANUFACTURING

- 6.1 As previously stated, distinction should be made for the requirements pertaining to a new Registration as opposed to that required in respect of a Transfer of a registration. An existing business should not be subject to the same prescriptions as required for a new application. Far less stringent procedures should be applied to a transfer application as opposed to a new application. Furthermore, prescribing the same requirements in respect of the two applications will result in an increase of costs pertaining to Transfer applications which should not be the intention of intended legislation.
- 6.2 The radius of 500 (five hundred) metres has been defined in the definition clause and the definition should therefore apply as a consistent in the Regulations.
- 6.3 Furthermore, the prescribed area of 500 (five hundred metres) was initially mooted some years back by the then President, Jacob Zuma, in a State of the Nation Address. This was the first and last time that reference was made to such increased radius.

- 6.4 Extremely onerous obligations have been placed on a Ward Committee. A Ward Councillor is a political appointment occupying such position via a democratic election process. A Ward Councillor forms part of the political infrastructure of a municipality in accordance with the provision of the Municipal Structures Act and thereby is obligated to perform certain administrative tasks for and on behalf of the municipality pertaining to the Ward for which the Councillor is elected.
- 6.5 Furthermore, a Ward Councillor receives monthly remuneration from the municipality and is allocated office space with secretarial assistance. Consequently, reference to Ward Committee should in fact be a reference to a Ward Committee under the direction of the Ward Councillor. A Ward Committee is an elected body of persons required to meet on a regular basis to receive feedback by the Ward Councillor who chairs such meetings. *Inter alia*, Ward Committee members are provided information as to developments relating to the Ward e.g. liquor applications, zoning applications, etc. Such aspects are then debated and input received. The Ward Councillor remains at all times the prescribed appointed liaison person regarding a Municipality.
- 6.6 The Ward Committee itself, does not have the ability to convene physical meetings of community members and carry out the proposed requirements as detailed in the proposed Regulations.
- 6.7 The Regulations accommodate the advertising of applications in the Provincial Gazette. It is common cause that ordinary community members do not have readily access to the Provincial Gazette. Accordingly, the legislation envisaged, as a cost effective measure, that a Ward Councillor (as Chairperson of a Ward Committee) should consult the community within the applicable Ward.
- 6.8 The purpose served thereby is to **alert** the community resident in a Ward of a pending liquor application being made in the Ward and thereby enable such community, where applicable, to object to the application. Simply put, a Ward Councillor is in close proximity to the residents residing within the applicable Ward and thereby in a position to “consulted” and thereby informed that an application for registration is taking place in the Ward as detailed in the Liquor Act.
- 6.9 Prescribing a radius of 500 (five hundred) metres from a proposed outlet can lead to **impractical** and **unenforceable** implications. By way of example, a proposed outlet situated on the edge of a Ward will present the Ward Councillor with an insurmountable obstacle. To comply with the intended prescribed distance, the Ward Councillor will be required to deal with residents situated outside of the Ward boundaries in question. The legislation clearly defines the geographical area of each Ward in the country and the Ward Councillor’s duties are restricted to such areas. Consequently, the solution is for the provisions to be amended to require that a **“Ward Councillor canvass the persons residing in the Ward”**.

- 6.10 It is submitted that there is no justification that a physical meeting be required to take place regarding residents. At this premature point relating to the process, the merits or lack thereof relating to the application, is premature for a Ward Councillor to be invested or responsible for dealing with issues to be decided in due course by the ECLB. Facilities to accommodate the community would be required to be hired or made available at a cost – certainly there is no indication that the ECLB will fund such costs. There are extremely limited facilities in a Ward capable of accommodating residents. It is reiterated that the intended purpose of the Ward Councillor being involved in the process pertaining to a liquor application is for the Ward Councillor to inform the residents in the Ward (particularly those in proximity) of an application in order to enable any resident to lodge an **objection** against such application.
- 6.11 With respect, it is antiquated thinking to expect a Ward Councillor (or Ward Committee if reference to such body is retained) to attend a physical meeting.
- 6.12 Many Ward Councillors have established WhatsApp groups and email databases extending to provide significant coverage to residents residing in the Ward or businesses operating in the Ward and such notifications are capable of being verified and referred to by the Ward Councillor in a report to the ECLB.
- 6.13 Additionally, residents are by and large apathetic in respect of attending meetings such as that as envisaged in the Regulations.
- 6.14 It is not understood why an applicant, who has a vested interest in the application in question, cannot assist a Ward Councillor to canvass residents, particularly those in the vicinity of the proposed premises. The completion of a canvass form requires details of those canvassed which enables such persons to be readily contacted and confirmation obtained that they are aware of the application. This is invariably a procedure currently followed by liquor inspectors of the ECLB and capable of being referred to as and when such liquor inspectors file their reports with the ECLB. Such verification process is more than adequate to serve various objectives namely that the residents in the area are aware of the pending application and capable of confirming that no coercion or factitious canvassing was carried out in respect of the application.
- 6.15 Furthermore, in certain instances, Ward Councillors are exposed to direct involvement with residents debating the merits of an application. This is not a competency or responsibility which should be placed on the Ward Councillor. The ECLB remains the body vested with the authority to approve or refuse applications and consider all aspects pertaining thereto once the process has completed and the application, necessary reports, objections and reply are before the ECLB. It is the body entrusted in terms of the legislation mandated to adjudicate as to the merits of approving or refusing an application.
- 6.16 Practical experience will also reflect that a Ward Committee in certain instances is not fully representative at meetings convened by the Ward Councillor from time to time.

It is now expected that they will attend a physical meeting outside of a monthly ward committee meeting!!

- 6.17 The ECLB is unable to sanction any non-compliance relating to a Ward Committee member who does not partake in the envisaged process. It is reiterated that the Ward Committee role be removed entirely from the process and that the Ward Councillor be substituted as the accountable party on behalf of the Ward Committee.
- 6.18 Put another way, a conundrum may exist in the sense that the Act makes reference to a Ward Committee and therefore the Regulations are required to be consistent in this regard. Therefore, the suggestion is that consideration be given to the Ward Committee then remain the reference in the regulations but qualified as being represented by the Ward Councillor.
- 6.19 It is entire impractical to prescribe that a report to be compiled by the Ward Councillor representing the Ward Committee must detail the fact that there is compliance with **relevant municipal health and safety regulations** and that **relevant municipal divisions/departments** were consulted by the Ward Committee on the application. The Ward Committee has no link whatsoever with the municipal council in terms of the municipal structures. Furthermore, the Ward Councillor is not suitably qualified to make reference to compliance regarding municipal health and safety regulations. As a political appointment, a Ward Councillor is furthermore restricted in consulting relevant municipal divisions or departments in the manner envisaged.
- 6.20 Furthermore, it is entirely unacceptable that in the event of a Ward Committee not attending to their statutory obligations (obligations which the regulations are now imposing and being outside of the statutory obligations) that it is incumbent on an **applicant** to have a “duty” imposed upon him/it to require the Ward Committee to attend to its obligations. It is the Department that saw fit to prescribe the processes and therefore the ECLB must assume responsibility to enforce the provisions.
- 6.21 All that the Act prescribes is that a Ward Committee (via the Ward Councillor) submit a copy of the report to the municipal council in addition to the ECLB. Provision should be made in the regulations that the submission to the municipal council is via the office of the municipal manager or such department as delegated by the municipal manager. **[The Municipality is thereby alerted to the application in question and can address aspects within its mandated jurisdiction]**
- 6.22 Clearly the Regulations are seeking to impose significant additional obligations on a Ward Committee/Ward Councillor over and above the obligation contained in the Act itself as well as an applicant. It is reiterated that the purpose of a Ward Committee/Ward Councillor submitting a copy of the report to the municipality is for the municipality alerted to the application in question and thereby enable it to address any jurisdictional aspects falling within the ambit of the municipality in question.

7 REPLY

- 7.1 Provision needs to be made for the Applicant to be afforded an opportunity to reply to any objections lodged in respect of an application.
- 7.2 This appears to be an omission.

8 CERTIFICATE OF REGISTRATION, TRANSFER, REMOVAL, MICRO-MANUFACTURING AND SPECIAL EVENT CONTEMPLATED

- 8.1 It is not understood what is meant by the wording of clause 6.4 of the Regulations. Where a registered business is sold to a third party via a sale of a business, the existence of a Registration Certificate and the transfer thereof is an integral part of the subject matter of such sale.
- 8.2 Similarly, the contents of clause 6.5 of the Regulations is unclear.

9 CHANGE OF SUBMITTED AND APPROVED PLAN OF PREMISES

- 9.1 The Act does not make provision for a requirement that premises which are altered require an applicant to make application for a "Change of Plan".
- 9.2 However, the Act envisages that an application made in respect of proposed premises must reflect the **place of liquor display** pertaining to such proposed premises. However, in such instances, the Act clearly provides that the consent of the Chairperson of the ECLB is required should any change be effected relating to a place of liquor display.
- 9.3 Therefore, the heading of the Regulations should refer to the changes relating to a place of liquor display and detail the prescribed fee to be paid and procedure to be followed.
- 9.4 It is entirely inappropriate for a requirement to be included that a plan relating to an amended place of liquor display requires prior approval by the relevant local municipality. Building plan approvals are required in certain instances to comply with the National Building Regulations and detail the instances in which an amended building plan is required to be submitted to a municipality for approval.
- 9.5 Changes effected to a place of liquor display or providing for an additional place of liquor display in registered premises invariably **does not require** any prior approval by the relevant local municipalities. An example in point would be the registered person of a liquor store who elects to replace the current fridges and place of liquor display areas to an amended scenario. Such registered person is free to effect such changes without any prior approval by the municipality.

10 MANAGEMENT OF BUSINESS

- 10.1 In almost every instance it is impossible for a natural person appointed in terms of Section 40 to be “physically present” during the **hours of operation** of the “liquor outlet”.
- 10.2 Firstly, the reference to liquor outlet should be changed to read “registered premises”.
- 10.3 Secondly, the purpose of the appointment in terms of Section 40 in the instance of a legal entity, is to ensure that in those instances where sanctions apply, such appointed person is capable of physically representing the legal entity pertaining to any proceedings as contained in the Act. The implications of clause 8(6) of the proposed regulations means that a Registered Premises applying the example of a Casino or Hotel operating on a 24 hour is that such appointed person be present at such business on a 24 (twenty four) hour basis.
- 10.4 It is reiterated that the purpose of Section 40 is to place accountability regarding the natural person appointed relating to any adverse proceedings and actions initiated in terms of the Act against the Registered Person.

11 PUBLIC ACCESS TO THE APPLICATION

- 11.1 Provision should be made for an applicant to waive POPIA applicability and that an application is a public document and capable of being accessed by any member of the public.
- 11.2 Simply put, any person seeking to object or initiate a complaint relating to a registered person should be afforded clear and unrestricted access to the content held by the ECLB pertaining to the registered person.
- 11.3 Provision is made for a suitable fee to be payable by any such third party seeking such information.
- 11.4 This provision is entire similar where any third party is capable of accessing information pertaining to registrations effected in the Deeds Office or with CIPC.

12 NOTICE FOR ANNUAL REGISTRATION FEE

- 12.1 The requirement is that the ECLB “must issue” a renewal notice to every registered person. This is an onerous exercise requiring the ECLB is establish proof.

- 12.2 Consideration should be given to an alternative proposal that the ECLB advertise upon commencement of the renewal period in two prominent newspapers in the province.

13 AGE VERIFICATION

- 13.1 Regulation 25(2) needs to be reconsidered as circumstances may not be justified in requiring a person being instructed to leave the liquor premises immediately.
- 13.2 Regulation 25(3) should be amended to read that an area where only liquor is sold is deemed to be a restricted area and not to be accessed by persons under eighteen years of age. However, persons under eighteen years of age are permitted in an area where the sale of food is accommodated.
- 13.3 Clause 25(4) should be reworded to simply refer that in applicable instances a registered person must reflect signage reading “No liquor may to be sold to persons under the age of eighteen years”.

14 TRANSFER OF LICENCES

- 14.1 The prescribed procedure and requirements relating to a transfer of licence should be accommodated under Regulation 29 (which will be far less onerous than that required for a new registration or removal).
- 14.2 Reference to Licensee should in fact refer to Registered Persons in order to be consistent with the provisions contained in the Act.
- 14.3 It is suggested the initial registration and transfer forms be distinct as reflected in the current Regulations.

15. FEES

Proposed prescribed for On and Off Consumption registrations are prohibitive taking into account that this category of registration was incorporated into the Liquor Act to accommodate Historically Disadvantaged Persons (HDI) selling liquor from Taverns utilizing residential properties.

Applicants intending to establish facilities in special instances to sell liquor from business premises for both on and off consumption purposes should be required to hold BOTH an On Consumption Registration **and** an Off Consumption Registration relating to the registered premises.

16. **SUMMARY**

- 16.1 The ECLB has historically been recognized, since inception of Provincial liquor legislation, as the best performing Liquor Board regarding turnaround timelines regarding the processing of applications.
- 16.2 It is inevitable that provisions contained in the proposed regulations are going to drastically negatively impact in respect of such performance.
- 16.3 The introduction of requirements pertaining to competencies within the purvey of Municipalities, in particular, will frustrate applicants unable to comply or enforce the provisions.
- 16.4 The introduction of aspects currently vesting with another creature of statute will further result in significant and increased cost implications for applicants.
- 16.5 This will extend to rental holding costs for applicants applying for a registration relating to leased premises as well as the associated costs securing certain documentation.
- 16.6 it should be foremost in the mind of the **Department of Economic Development** which is the department exercising oversight over liquor legislation that “red tape” and delays should be minimised as should be the case regarding cost implications for existing and prospective registered persons. The objective of the Department should be the creation of a “business friendly” environment simplifying processes and encouraging business and employment initiatives – currently the Province has the highest unemployment rate in South Africa.

DATED at GQEBERHA on this 15th day of MAY 2024

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