

Approved for tabling.

SNAP
23/6/2020



PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FOURTH SESSION (2020)

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND
NATIONAL SECURITY

REPORT ON:

THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL,
2019

(NATIONAL ASSEMBLY BILL No. 70 OF 2019)

Directorate of Committee Services,
The National Assembly,
Parliament Buildings,
NAIROBI

June, 2020



THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 23 JUN 2020

DAY:

TUE

TABLED
BY:

CHAIR - HON PAUL KOINANGE

CLERK-AT
THE-TABLE:

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CHAIRPERSON'S FOREWORD

The Alcoholic Drinks Control (Amendment) Bill, 2019 (National Assembly Bill No. 70 of 2019) was introduced in the National Assembly on Wednesday, 30th October, 2019 and immediately thereafter committed to the Departmental Committee on Administration and National Security for review and report to the House pursuant to the provisions of Standing Order 216(5) (c).

Pursuant to the provisions of Article 118 of the Constitution of Kenya and Standing Order 127 (3), the Committee invited public participation on the Bill and considered most of the recommendations by the major stakeholders during its consideration of the Bill.

May I take this opportunity to commend the Committee Members for their devotion and commitment to duty which made the consideration of the Bill successful. May I also express gratitude to the Offices of Speaker and Clerk of the National Assembly for providing direction and the Committee secretariat for exemplary performance in providing technical and logistical support to the Committee.

On behalf of the Departmental Committee on Administration and National Security and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House a report of the Committee on the Alcoholic Drinks Control (Amendment) Bill, 2019 (National Assembly Bill No. 70 of 2019).

HON. PAUL KOINANGE, M.P.
CHAIRPERSON

PART 1

1.0 PREFACE

1.1. Mandate of the Committee

1. The Departmental Committee on Administration and National Security derives its mandate from the provisions of Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows-
 - (a) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - (b) *study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
 - (c) *study and review all legislation referred to it;*
 - (d) *study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - (e) *investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - (f) *vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)*
 - (g) *examine treaties, agreements and conventions;*
 - (h) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - (i) *consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and*
 - (j) *examine any questions raised by Members on a matter within its mandate.*
2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-
 - (i) National security;
 - (ii) Police services;
 - (iii) Home affairs;
 - (iv) Public administration;
 - (v) Public service;
 - (vi) Prisons;
 - (vii) Immigration;
 - (viii) Management of natural disasters; and

(ix) Community service orders.

1.2. Committee Membership

3. The Committee was constituted on Thursday, 14th December, 2017 and comprises the following Honourable Members-

Chairperson

Hon. Paul Karuga Koinange, MP
Kiambaa Constituency

Jubilee Party

Vice-Chairperson

Hon. John Waluke, MP
Sirisia Constituency

Jubilee Party

Hon. Wafula Wamunyinyi, MP Hon. (Dr.) Tecla Tum, MP
Kanduyi Constituency Nandi County

Ford Kenya Party

Jubilee Party

Hon. Peter Kaluma, MP Hon. Josphat Kabinga, MP
Homa Bay Town Constituency Mwea Constituency

ODM Party

Jubilee Party

Hon. (Dr.) Makali Mulu, MP Hon. Nimrod Mbai, MP
Kitui Central Constituency Kitui East Constituency

Wiper Party

Jubilee Party

Hon. Theuri George, MP Hon. Ngunjiri Wambugu, MP
Embakasi West Constituency Nyeri Town Constituency

Jubilee Party

Jubilee Party

Hon. Joshua Aduma Owuor, MP Hon. Abdi Shurie Omar, MP
Nyakach Constituency Balambala Constituency

ODM Party

Jubilee Party

Hon. Didmus Barasa, MP Hon. Halima Mucheke, MP
Kimilili Constituency Nominated Member

Jubilee Party

Jubilee Party

Hon. Geoffrey King'ang'i, MP Hon. Oku Kaunya, MP
Mbeere South Constituency Teso North Constituency

Jubilee Party

ANC Party

Hon. Arbelle, Marselino, MP Hon. Ahmed Kolosh, MP
Laisamis Constituency Wajir West Constituency

Jubilee Party

Jubilee Party

Hon. Peter Masara, MP

Suna West Constituency
Independent Party

1.3. Committee Secretariat

4. The Committee's secretariat comprises by the following officers-

Mr. George Gazemba
Principal Clerk Assistant

Mr. Joshua Ondari
Clerk Assistant

Ms. Brigita Mati
Legal Counsel

Mr. Edson Odhiambo
Fiscal Analyst

Mr. James Muguna
Research Officer

Mr. Josephat Bundotich
Serjeant-at-Arms

Ms. Eva Kaara
Serjeant-at-Arms

Mr. Yaqub Ahmed
Media Officer

Mr. Rodgers Kilungya
Serjeant-at-Arms

5. Minutes of the Committee sittings on consideration of the Bill form annexure 1 of this report.

PART 2

2.0 THE ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL, 2019 **(NATIONAL ASSEMBLY BILL No. 70 OF 2019)**

2.1 Memorandum of Objects and Reasons of the Bill

6. The principal object of the Bill is to amend the Alcoholic Drinks Control Act No. 4 of 2010 to empower the Cabinet Secretary to prescribe the hours within which electronic advertisement of alcoholic drinks shall be done.
7. This is in order to reduce the exposure to children and other vulnerable persons in the community such as recovering alcoholics of unsuitable content on alcohol consumption.

PART 3

3.0 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL

3.1. Legal provisions on public participation

10. Article 118 (1) (b) of the Constitution of Kenya provides as follows-
"Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees"
11. Standing Order 127(3) provides as follows-
"The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House"
12. The Committee conducted public participation on the Bill as required by the Constitution and Standing Orders and among members of the public who made representations on the Bill to the Committee were the Kenya Association of Manufacturers (KAM), Kenya Breweries Limited (KBL), Media Council of Kenya, Media Owners Association of Kenya and Keroche Breweries. Among the public representations made on the Bill were as follows-
 - (a) The existing law was applying to both measured and unmeasured media. Measured media include radio, television, outdoor billboard and signs, print (magazine and newspapers; the unmeasured include sponsorship of music, concerts, sporting events, and other forms of entertainment and celebrations;
 - (b) The Bill did not address the issues of counter-advertising as a critical strategy against underage drinking and smoking; and
 - (c) What the bill was proposing was already contained in the existing laws such as the Kenya Information and Communication Act of 2015, Kenya Information and Communication (Broadcasting) Regulations of 2016, the Programming Code for Broadcasting Services in Kenya and Administrative guidelines on Alcohol Advertising.

PART 4

4. CONSIDERATION OF THE BILL

The principal object of the Bill is to amend the Alcoholic Drinks Control Act, No.4 of 2010 to empower the cabinet Secretary

Clause 1- provides for the short title to be cited as the Alcoholics Drinks Control (Amendment) Act, 2019.

Clause 2- provides for amendment to section 45 of the Act to prohibit persons advertising for an alcoholic drink, to advertise in such a manner that it creates a false impression of it (the drink) being a national symbol, the consumption of which promotes national values.

The amendment further provides that the Cabinet Secretary is to prescribe the hours within which the electronic advertisement of alcoholic drinks shall be done.

Clause 3- seeks to amend section 68 of the Act to task the Cabinet Secretary “prescription of hours within which electronic advertisement of alcoholic drinks shall be done.

Analysis of the Alcoholics Drinks Control (Amendment) Bill, 2019

Freedom of expression is enshrined in Article 33 of the Constitution. It provides in sub-article (1) (a) the freedom to seek, receive, or impart information or ideas. However this right can be limited by law. Advertisement of alcohol is provided in the Alcoholics Drinks Control Act (No. 4 of 2010). It provides in Section 45

Promotion by advertisement

- (1) Subject to this Part, no person shall promote an alcoholic drink so as to create a false impression that-
 - (a) a link exists between consumption of that drink and social or sexual success;
 - (b) consumption of that drink is acceptable before or while engaging in driving, operating machinery, sports or other activities that require concentration in order to be carried out safely;
 - (c) that the alcoholic drink has a therapeutic value or that it has the ability to prevent, treat or cure any human disease; and
 - (d) it is wrong or foolish to refuse that drink.
- (2) A person who contravenes any of the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

The Second Schedule to the Act provides for warning health messages to be displayed on every package containing an alcoholic drink, sign or advertisement.

The Kenya Films Classifications Board a state corporation under the Ministry of Information, Communications and Technology tasked

information regulation. The Board is to regulate the creation, broadcasting, possession, distribution and exhibition of films by—

- (i) examining every film and every poster submitted under this Act for purposes of classification;
- (ii) imposing age restriction on viewership;
- (iii) giving consumer advice, having due regard to the protection of women and children against sexual exploitation or degradation in cinematograph films and on the internet;

It is important to note that the Alcoholic Drinks Control Act regulates the content in any alcohol advertisement while the Films and Stage Plays Act Cap. 222 provides for classification of films or poster for purposes of imposing age restriction on viewership. (Classification of content).

Implication of the proposed amendment

The effect of the proposal is as follows—

- (a) Will provide hours within which electronic advertisement of alcoholic drinks shall be done during school holidays;
- (b) The proposed regulations if published will supersede the Kenya Film Classification Board, Classification guidelines 2012;
- (c) Will be in conflict with Films and Stage Plays Act as the main object of the amendment is to restrict viewership and protect children against sexual exploitation or degradation in cinematograph films etc.

PART 5

5. OBSERVATIONS

- a) Alcoholic advertising regulation applies to measured and unmeasured media. Measured media encompasses traditional forms of advertising which includes electronic media (television and radio), outdoor billboard and signs; print (magazines and newspapers). Advertising in this scenario relates to content regulation such as what images and statements can be held in the advertisement and placement regulation which entails where and when an ad can be shown in public. The Bill addresses measured media which relates to only twenty per cent of alcoholic advertising regulation.
- b) There are guidelines on Alcoholic Industry Advertising developed by the Ministry of Trade, Ministry of Information and Communication and the Alcoholic Beverage Association of Kenya which provides in guideline 1 (all alcoholic beverage advertising on television must be past 8.30pm on all days of the week, radio advertising to be past 1.00pm on all days of the week. The purpose is to reduce exposure of such advertisements to children)
- c) With regard to electronic advertising, media owners are under an obligation pursuant to Section 46I of the Kenya Communications Act, 2015 to provide responsible and responsive programming that caters for varied needs and susceptibilities of different sections of the Kenyan Community. Further, the Kenya Information and Communication (Broadcasting) Regulations, 2016 in rule 19 mandates a licensee to ensure that due care is exercised in order to avoid content that may disturb or be harmful to children that has offensive language, explicit sexual or violent material, music with sexually explicit lyrics or lyrics which depict violence.
- d) Regulation 32 mandates broadcasters to exercise responsible judgement when scheduling advertisements that may be unsuitable for children during periods when children are expected to be watching or listening to programmes. Further, regulation 33 also mandates the broadcaster to schedule all programming for the watershed period including advertisements, to conform to the rights of children. The regulations have defined the watershed period to mean time between 5.00 am and 10.00 pm, or such other time as may be prescribed by the Authority.
- e) There are adequate measures in place in law to mitigate against exposure of minors and other vulnerable persons in the community to unsuitable content on alcoholic consumption. However, there may be need to conduct a regulatory impact assessment on compliance of the above statutory requirements on broadcasters and alcoholic beverage companies.

- f) There exist adequate measures in law that mitigate against exposure of minors and other vulnerable persons in the community. The Films and Stage Plays Act Cap 222, KICA Section 46 (i), the Programming Code for Broadcasting Services in Kenya and the Administrative Guidelines on Alcohol Advertising all provide for measures that mitigate against exposure of vulnerable persons to unsuitable content.

6. RECOMMENDATIONS

The Committee rejected the Bill because-
There exist adequate measures in law that mitigate against exposure of minors and other vulnerable persons in the community. The Films and Stage Plays Act Cap 222, KICA Section 46 (i), the Programming Code for Broadcasting Services in Kenya and the Administrative Guidelines on Alcohol Advertising all provide for measures that mitigate against exposure of vulnerable persons to unsuitable content.

SIGNED.....

HON. PAUL KOINANGE, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON

ADMINISTRATION AND NATIONAL SECURITY

DATE.....23rd June 2020.....

MINUTES OF THE 18TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON THURSDAY, 12TH MARCH, 2020 AT 9.00 A.M. IN THE BOARDROOM ON 11TH FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS.

PRESENT-

- | | | |
|---|---|-------------------------|
| 1. Hon. Paul Koinange, MP | - | <i>Chairperson</i> |
| 2. Hon. John Waluke, MP | | <i>Vice Chairperson</i> |
| 3. Hon. Wafula Wamunyinyi, MP | | |
| 4. Hon. Peter George Kaluma, MP | | |
| 5. Hon. Dr. Makali Mulu, MP | | |
| 6. Hon. Aduma Owuor, MP | | |
| 7. Hon. Dr. Tecla Chebet Tum, MP | | |
| 8. Hon. Josphat Kabinga Wachira, MP | | |
| 9. Hon. Oku Kaunya, MP | | |
| 10. Hon. Peter Masara, MP | | |
| 11. Hon. Didmus Wekesa Barasa Mutua, MP | | |
| 12. Hon. Ahmed Kolosh Mohamed, MP | | |

ABSENT WITH APOLOGIES

1. Hon. George Theuri, MP
2. Hon. Marselino Malimo Arbelle, MP
3. Hon. Halima Mucheke, MP
4. Hon. Abdi Omar Shurie, MP
5. Hon. Ngunjiri Wambugu, MP
6. Hon. Geoffrey Kingagi Muturi, MP
7. Hon. Nimrod Mbithuka Mbai, MP

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant II |
| 2. Mr. Joshua Ondari | - | Clerk Assistant |
| 3. Ms. Brigitta Mati | - | Legal Counsel |
| 4. Mr. James Muguna | - | Researcher Officer |

5. Mr. James Oloo

- Support Staff

NATIONAL ASSEMBLY

Hon. Mwambu Mabongah, MP

MIN No. 66/2020:-

**PRELIMINARIES AND COMMUNICATION
FROM THE CHAIRPERSON**

The Chairperson officially welcomed Members to the meeting at 9.10 am with a word of prayer.

MIN No. 67/2020:-

**MEETING WITH HON. MWAMBU
MABONGAH, MP, REGARDING
INCESSANT OF INSECURITY INCIDENTS
IN BUMULA CONSTITUENCY**

Hon. Mwambu Mabongah, MP, appeared before the Committee and said as follows-

- a) The issue of insecurity was getting out of hand noting that so far they had lost 12 persons and several animals lost, with the latest being on 11th March, 2020;
- b) The incidences were happening under the watch of police officers. He highlighted various issues of concern in the constituency including;
 - i) Issues of the porous Uganda border;
 - ii) The opening time of the Government slaughter at 4:00am;
 - iii) Political instability in the region;
 - iv) Police officers who have overstayed in the post beyond 3years requirement;
 - v) Lack of equipment by the police officers which inhibit quick response; and
 - vi) Police officers doing business with local residence.

He requested for;

- a) Immediate transfer of policemen and the OCPD;
- b) The Government to address the issues of forceful theft;

- c) Need for leadership of the area to meet and address the issues of insecurity; and
- d) Need to change the opening of the slaughter from 4:00am to 8:00am.

MIN No. 68/2020:-

**ADOPTION OF THE REPORT ON THE
ALCOHOLIC DRINKS (AMENDMENT)
BILL, 2019**

The report was adopted unanimously by the Committee after having been proposed and seconded by the Hon. Aduma Owuor, MP and the Hon. Oku Kaunya, MP respectively.

MIN No. 69/2020:-

ANY OTHER BUSINESS

The secretariat reminded the Members that the Committee was scheduled to conduct a field visit to Bumula Constituency on **Sunday, 15th March, 2020** and return on **Tuesday, 17th March, 2020**. with a view to further appraise itself on the matter of insecurity in the area. The Members who had confirmed attendance were as follows-

1. Hon. Paul Koinange, MP -
2. Hon. Peter Masara, MP
3. Hon. Peter George Kaluma, MP
4. Hon. Aduma Owuor, MP
5. Hon. Dr. Tecla Chebet Tum, MP
6. Hon. Halima Mucheke, MP
7. Hon. Oku Kaunya, MP

Chairperson

MIN No. 70/2020:-

ADJOURNMENT

The Chairperson adjourned the meeting at eleven fifteen in the morning until Thursday, 19th March, 2020 at 10:00 am.

Signed.....
Chairperson

Date.....*23rd June 2020*.....

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

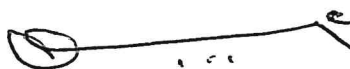
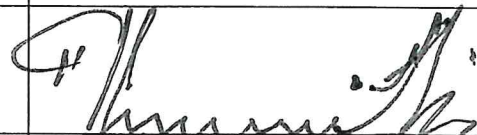


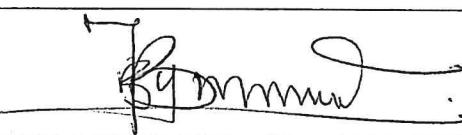

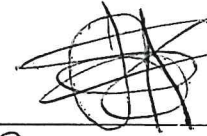
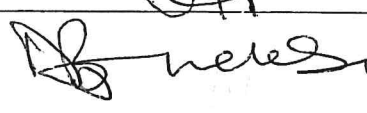

ATTENDANCE SCHEDULE








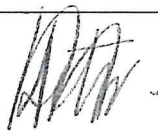
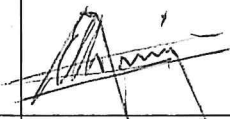

DATE: 12th March, 2019

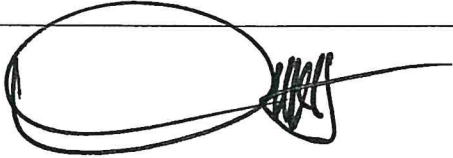
TIME: 9.00 a.m.

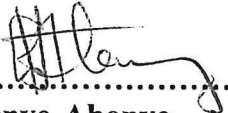
VENUE: Boardroom on 11th Floor, Protection House

AGENDA: Adoption of the Report on the Alcoholic Drinks Control (Amendment) Bill, 2019

NO.	NAME	SIGNATURE
1.	Hon. Paul Koinange, MP - Chairperson	
2.	Hon. John Waluke, MP - Vice Chairperson	
3.	Hon. Wafula Wamunyinyi, MP	
4.	Hon. George Peter Kaluma, MP	
5.	Hon. Dr. Makali Mulu, MP	
6.	Hon. George Theuri, MP	
7.	Hon. Aduma Owuor, MP	
8.	Hon. Didmus Wekesa Barasa Mutua, MP	
9.	Hon. Geoffrey Kingagi Muturi, MP	

10.	Hon. Marselino Malimo Arbelle, MP	
11.	Hon. Dr. Tecla Chebet Tum, MP	
12.	Hon. Josphat Kabinga Wachira, MP	
13.	Hon. Nimrod Mbithuka Mbai, MP	
14.	Hon. Ngunjiri Wambugu, MP	
15.	Hon. Abdi Omar Shurie, MP	
16.	Hon. Halima Mucheke, MP	
17.	Hon. Peter Masara, MP	
18.	Hon. Oku Kaunya, MP	
19.	Hon. Ahmed Kolosh Mohamed, MP	

Signed..........Date.....12/03/2022.....
George Gazemba, ACI Arb, CPM,
Principal Clerk Assistant,
Departmental Committee on Administration and National Security.

Signed..........Date.....22/5/2020.....
Florence Atenyo-Abonyo,
Director, Committee Services.



**Kenya
Red Cross**

TENDER NOTICE

The Kenya Red Cross Society (KRCS) was established in 1965 by an Act of Parliament (Chapter 256 Laws of Kenya) as a voluntary Aid Society, auxiliary to the national and county governments. Its vision is to be the most effective, most trusted and self-sustaining humanitarian organization in the country. KRCS was appointed by the Kenya Country Coordinating Mechanism (KCM) as the Civil Society Principal Recipient (PR) to manage resources under the Country's Global Fund HIV Grant implemented through selected Sub Recipients (SRs).

KRCS is currently seeking for qualified and eligible bidders to undertake the following consultancy:

TENDER DESCRIPTION	TENDER NUMBER	CLOSING DATE
CONSULTANCY SERVICES FOR TRAINING PARALEGALS FOCUSING ON PEOPLE LIVING WITH HIV AND KEY POPULATIONS	GFQ11561	19th July 2019

Interested and qualified consultants and bidders are invited to inspect and download the bid documents free of charge from the Kenya Red Cross Society website (<https://www.redcross.or.ke/Tenders>)

Those who download the documents and intend to submit a bid must forward their particulars to the tender's email address indicated on the website for recording and for the purpose of receiving any clarification and addenda. All queries and clarifications to be sent to tenders@redcross.or.ke by 12th July 2019 and all responses will be posted on the website by 15th July 2019.

Complete Tender Documents clearly marked tender number and tender description "TENDER NO: GFQ11561" "Consultancy Services for Training Paralegals focusing on PLHIVs and KPs" should be addressed to:

The Chair Tender Committee,
Kenya Red Cross Society
P.O. Box 40712 - 00100 Nairobi, Kenya

And must be deposited in the Tender Box located at the Reception on the Ground Floor of the Kenya Red Cross Society - Headquarters in South C, Red Cross Road, off Popo Road, Nairobi on or before 11.00 am on Friday 19th July 2019. Late submissions will not be accepted. Tenders will be opened at 12.00 noon at the Society's Headquarters on the same day in the presence of the bidders and/or their representatives who choose to attend.

Deputy Secretary General, Corporate Services,
Supply Chain & M.D. E-Plus,
For, Secretary General

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - THIRD SESSION

In the matters of consideration by the National Assembly:-

1. The Prevention of Terrorism (Amendment) Bill (Senate Bill No. 20 of 2018)
2. The Assisted Reproductive Technology Bill (National Assembly Bill No. 34 of 2019)

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "The Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Prevention of Terrorism (Amendment) Bill (Senate Bill No. 20 of 2018) seeks to amend the Prevention of Terrorism Act to provide for the duty of Institution administrators to counter radicalization. The Bill seeks to ensure that all Institution administrators are mandated and charged with the duty of ensuring that measures are put in place in their respective institutions to prevent radicalization and violent extremism.

The Assisted Reproductive Technology Bill (National Assembly Bill No. 34 of 2019) seeks to regulate rights and obligations relating to assisted reproductive technology and with a view to regulating the use of assisted reproductive technologies to aid individuals or couples that have challenges conceiving due to factors associated with infertility. Further, the Bill seeks to regulate the qualifications of health practitioners who administer assisted reproductive technology in order to protect recipients of the services.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127(3) and stand committed to the Departmental Committee on Administration & National Security and Departmental Committee on Health respectively, for consideration and thereafter report to the House.

Pursuant to the provisions of Article 118(1)(b) of the Constitution and Standing Order 127(3), the respective Committees invite members of the Public to submit representations they may have on the said Bills. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Thursday 11th July, 2019 at 5.00 pm.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY



LAKE VICTORIA NORTH WATER WORKS DEVELOPMENT AGENCY, COUNTY GOVERNMENTS OF TRANS-NZOIA, BUNGOMA AND NZOIA WATER SERVICES COMPANY

PUBLIC NOTICE

RE-ADVERTISEMENT

INVITATION FOR APPLICATION OF BOARD OF DIRECTORS VACANT POSITIONS IN NZOIA WATER SERVICES COMPANY LIMITED

Nzola Water Services Company (NZOWASCO) is a limited liability Company jointly owned by the County Governments of Trans-Nzola and Bungoma and is responsible for efficient and economic provision of water and sewerage services within its area of jurisdiction. The area of supply served covers Kitale, Bungoma, Webuye, Chwele, Kimilili towns and their environs.

The Board of Directors comprises representatives of stakeholders identified by the County Governments of Trans-Nzola and Bungoma in accordance with the Water Sector Corporate Governance Guidelines issued by the Water Services Regulatory Board. One third of the Board retires on expiry of three years contract on rotation at every Annual General Meeting (AGM).

The Board of NZOWASCO has vacancies for representatives of the following stakeholders:

- One (1) Director from Bungoma County **MUST** be nominated by registered business Community, Hotel Owners Associations, Manufacturing, Jua Kali Associations, Farmers and Consumers organizations.
- One (1) Director from Trans-Nzola County **MUST** be nominated by a body of professionals representing Accountants, Engineers, Lawyers, Doctors, Human Resource among others.

ELIGIBILITY CRITERIA

To be eligible all the persons appointed to the Board shall have a minimum of;

- a) Bachelors degree from a recognized university in any of the following professions; accounting / Finance, Engineering, Human Resource Management, Law, Medicine, ICT.
- b) A member of a professional body in good standing
- c) Must have a minimum of Seven years working experience in the core profession of the person.
- d) Must meet the Leadership and Integrity requirements under Chapter Six of the Constitution, 2010. (Submit KRA, CRB, HELB, GOOD CONDUCT & EACC clearance certificates)
- e) Have experience as change management agent.
- a) Download and fill the WASREB Fit and Proper test form also available www.nzowater.or.ke.
- b) Have attended a Corporate Governance Training in a recognized institution.
- c) Must not be supplier or other trading associates of the company.

Application Criteria

Interested and suitably qualified persons meeting the above criteria and residents within the Company's area of coverage are requested to Post or send their application letter attaching copies of relevant certificates, testimonials, National Identity Card, letter from the nominating body, resume/ curriculum vitae highlighting relevant experience, daytime phone contacts, email address and three (3) referees both in hard and soft copy to:

Chairperson Selection Committee,
Nzola Water Services Company Limited,
P.O. Box 1010-50205
WEBUYE.

Email Address: selectionpanel2019@gmail.com

Please indicate on the envelope "APPLICATION FOR DIRECTORSHIP IN NZOWASCO"
Your application should reach us on or before Friday, 12th July 2019.

Or may be deposited at Nzola Water Services Company Limited Head Office - Webuye, opposite former Pan Paper Mills, Next to Masinde Muliro University (Webuye Branch) along Webuye - Eldoret/ Bungoma road.

APPLICANTS WHO HAD EARLIER APPLIED ARE ENCOURAGED TO RE-APPLY.
Women and Youths are also encouraged to apply

Late applications will be rejected.

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② GAZETTED

Please see

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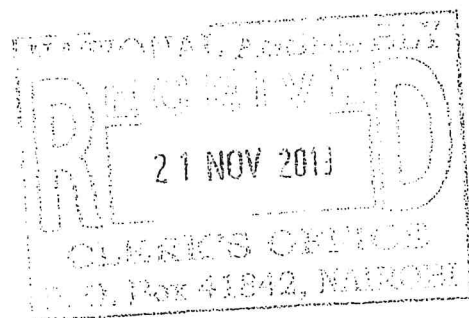


① 01/11/2019
2/11/19

Our Ref: KAM/10/28/mb/PW/2019

19th November, 2019

Mr. Michael Sialai
The Clerk
The National Assembly
Parliament of Kenya, Parliament Buildings
P.O Box 41842 - 00100
NAIROBI



Dear Mr. Sialai,

RE: SUBMISSION OF KAM MEMORANDUM ON THE ALCOHOLIC DRINKS CONTROL BILL, 2019

The Kenya Association of Manufacturers (KAM) presents its compliments on behalf of its members and appreciates the continued support.

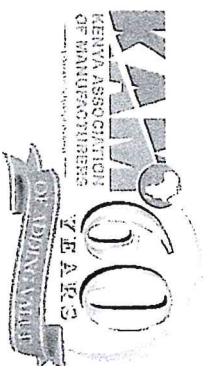
The purpose of this letter is to submit the Kenya Association of Manufacturers Memorandum on the Alcoholic Drinks Control Bill 2019 and request for a meeting to discuss our member's proposals.

Feedback may be communicated to us via our physical address and advance feedback email to ceo@kam.co.ke on mobile +254 721 303335/+254 723 443363.

Your early feedback will be appreciated.

Yours sincerely,


Phyllis Wakiaga
CHIEF EXECUTIVE



KAM MEMORANDUM

ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL 2019

No.	Clause/reference in Bill	Proposal	Rationale/ Justification for proposal
1.	Section 32 (3) The Alcoholic Drinks Act No. 4 of 2010	<p>Delete the word “package” appearing at the end of section 32(3) and substitute thereof with the word “label”.</p> <p>The clause will read as follows:</p> <p>‘S 32 (3) The statement and health warning referred to in subsection (2) shall comprise not less than 30% of the total surface area of the <u>label</u>.’</p>	<p>This provision requires the statement and health warning to comprise not less than 30% of the total surface area of the <u>package</u>. This is onerous on the manufacturers of alcoholic beverages for the following reasons:-</p> <p>(a) It requires an investment on labels which usually do not cover the total surface area of the package;</p> <p>(b) This will require an investment on specialised machinery and applicators to enable compliance with the provisions requiring that the statement and health warning comprises not less than 30% of the total surface area of the package.</p> <p>(c) There will be increased costs in respect of</p>

			<p>returnable packaging which require cleaning and removing of labels prior to subsequent use. The cost of cleaning the returnable packaging will increase due to the coverage of the total surface area of the package.</p> <p>The amendment of the section is key for the following reasons:-</p> <p>a. Manufacturing is a key pillar for the Big 4 agenda with the government setting out to incentivise and ease the cost of investment for manufacturers in the country. The provision has a countervailing effect in that it increases the costs of goods produced as it has a capital investment component.</p> <p>b. The increased costs of goods produced will be passed on to the ultimate consumer and thus affect the affordability of alcoholic drinks. In turn, some consumers will opt for illicit and counterfeit alcoholic drinks which tend to be cheaper. This impacts on health of the consumers as there is no quality assurance in respect of illicit and counterfeit goods. Ultimately, this will also impact a key government initiative of addressing issues with respect to illicit and counterfeit goods.</p>
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			<p>c. There is also a concern on the disposal of the labels covering the total surface area of the packaging. The current efforts by the government in environmental conservation will be thwarted if the labels are disposed of in an irregular manner.</p>
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Kenya Breweries Limited | UDV (Kenya) Limited
Subsidiaries of the EABL Group



5th March 2020

Michael R. Sialai, EBS
The Clerk of the National Assembly
Departmental Committee on Administration and National Security
National Assembly

Dear Sir,

RE: SUBMISSION OF MEMORANDUM ON ALCOHOL DRINKS CONTROL BILL 2019

In line with your request in a letter Ref: **NA/DCS/DCANS/2020/11** dated **25th February 2020**, Kenya Breweries Limited/UDV (Kenya) Limited (KBL/UDV), a Kenyan manufacturer and exporter of alcoholic and non-alcoholic beverages would like to make the following written submission to this committee:

A. BACKGROUND

KBL and UDV are subsidiary companies under East African Breweries Limited (EABL), an NSE-listed company that manufactures and exports alcoholic and non-alcoholic beverage. KBL and UDV conducts all its marketing campaigns to:

- a) Inform adult consumers of its brands, pricing and availability in line with law
- b) Relay information in compliance with consumer protection laws
- c) sensitize and communicate changes to its brands to adult consumers i.e. those who are 18years and above. This is an important tool that supports its fight against sale of illicit and counterfeit products
- d) champion and communicate consumption of alcohol in moderation and in a sensible way to its adult audience. For example, we have conducted a number of campaigns in partnership with the National Police Service, National Transport and Safety Authorities, County Governments and other Civil Society Groups.

Electronic advertising i.e. broadcasting through Television and Radio, remains the most effective awareness channel because of its capacity to:

- a) educate, inform and empower consumers to be able to distinguish between genuine and counterfeit alcoholic products
- b) create awareness on responsible drinking.

B. GUIDING PRINCIPLES ON ADVERTISING

Given our strong understanding of the role and impact of alcohol in our society, we conduct and encourage all our media agencies and partners to broadcast alcohol related advertisements in a responsible and responsive manner in order to cater for the varied needs and susceptibilities of different sections of the Kenyan community.

As a leading alcoholic beverage manufacturer, we adhere to a stringent self-regulation guidelines and legal provisions. These include: -



1. Administrative Guidelines on Alcohol Advertising

In 2010, the Ministry of Information and Communication, Ministry of Trade and Industry, a consortium of licensed Alcoholic Beverages companies among other key stakeholders, developed administrative guidelines to monitor and self-regulate the way brands are marketed in order to promote responsible consumption of alcohol in Kenya (*See attached appendix 1*). These guidelines remain in force to date, having been developed in consultation with a wide number of stakeholders including Marketing Society of Kenya (MSK), Advertising Practitioners Association (APA), Kenya Association of Manufacturers (KAM), Media Owners Association (MOA) and Public Relations Society of Kenya (PRSK), in addition to the government and licensed alcoholic drinks companies.

2. Alcohol Beverage Association of Kenya (ABAK) Marketing Code

Further, in 2018, the alcohol industry went a step further on its commitment to self-regulate and enhance its impact by developing and implementing an industry Marketing Code (*See attached appendix 2*). The code covers all forms of communication including packaging, point of sale, trade promotion etc.

3. KBL/UDV Marketing Code

KBL/UDV marketing code sets out the minimum standard that applies to all our activities that communicate and market its brands, regardless of media. It is mandatory for KBL, UDV, third-party agencies, contractors, third-party distributors and consultants engaged by KBL/UDV to market its brands to abide by its marketing code. The marketing code applies to all activities intended to market its brands, including but not limited to trade advertising, events, sales materials, digital, mobile and social media, consumer advertising, brand-related media or communications, and relationship marketing (*see attached appendix 3*).

The principles in the marketing code indicate that KBL/UDV media engagements must:

- Always show respect for those who choose to abstain from alcohol
- Be aimed only at adults and never target minors. This is done through careful control of content and placement of the advertisement.
- Be designed and placed for an adult audience, and never be designed or constructed or placed in a way that appeals primarily to individuals who are underage. For example, we never use any image, symbol, language, gesture, music, cartoon character, person, sporting/entertainment celebrity, hero, or promotional prize or gift that appeals primarily to those who are underage. In addition, people appearing in our alcohol brand advertising must be over 25 years or older.
- monitor the audience composition of media in which we advertise on a regular basis to ensure compliance to the highest practical level.
- Depict and encourage only moderate and responsible drinking. All our electronic advertisements contain responsible drinking reminders and/or initiatives.
- Not imply that lower-strength alcohol beverages may be consumed in ways or situations that would be inappropriate with higher strength beverages.
- Not imply that its alcohol brands offer any health, therapeutic, dietary, functional or performance benefits.



- Only portray drinking in safe and appropriate circumstances. None of its electronic advertisement portray drinking before or whilst driving motor vehicles, operating machinery, or any other similar activity or situation.

4. Alcohol Drinks Control Act 2010 Provisions

The current legislation has comprehensive provisions regulating sale, distribution, promotion and advertising of alcoholic production. These provisions include: -

- a) Section 48 of 4. Alcohol Drinks Control Act 2010 (ADCA 2010) prohibits the use of media to disseminate any alcoholic drink promotion that is prohibited
- b) The ADCA 2010 under sections 21, 28, 29, 46 acknowledge the offences related to sale, promotion, employment or allowing access to alcoholic products to persons under the age of eighteen and provides penalties and fines for those convicted of such offences. The offences including imprisonment of a period not exceeding three years or fines ranging from Kshs 150,000 to Kshs 500,000 or both.
- c) Section 45 of ADCA 2010 restricts promotion of alcohol drinks in a way that creates a false impression that consumption of alcohol is linked to social, therapeutic, health or sexual success.
- d) All alcohol advertisements contain health messages as stipulated under the second schedule of the ADCA 2010¹.
- e) Section 32 provides that all alcoholic product packaging material clearly communicate that these products are not meant for consumption by minors.
- f) County Alcoholic Drinks Control laws provide for stiff sanctions against indiscriminate advertisement and access to alcoholic products by children and vulnerable groups. The sanctions include cancellation of licences, imprisonment and fines.
- g) ADCA 2010 prohibits airing of any advertisements in event or activity associated with persons under the age of eighteen years or the use of content that are associated with persons under the age of eighteen years.
- h) Section 29 of the Act requires that all outlets that sell alcohol display signage indicating that they do not sell alcohol to persons under the age of 18. For example, Supermarkets are required to have a dedicated selling point for alcohol. There are stiff for non-compliance with this provision.
- i) Section 24 prohibits any person from giving access to a minor to areas in which alcoholic drinks are manufactured, stored or consumed.
- j) Section 30 and 31 prohibits the sale of alcoholic drinks in formats (sachets, PET) and medium (vending machines) that are easily accessible to minors.

5. Media Council of Kenya

The Media Council of Kenya is an independent national institution established by the Media Council Act, No. 20 of 2013 for purposes of setting of media standards and ensuring compliance with those standards as set out in Article 34(5) of the Constitution and for connected purposes.

¹ Health messages included in ALL electronic advertisements: - Excessive alcohol consumption is harmful to your health; Excessive alcohol consumption impairs your judgment; do not drive or operate machinery; Not for sale to persons under the age of 18 years.



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The Council is guided by the vision of a society where media freedom is respected, upheld, protected and maintained and where journalists, media practitioners and media houses are professional, responsible and adhere to media ethics.

The Media Council of Kenya is mandated by law and has the capacity to handle any complaints that may be deemed to be offensive, unprofessional or unethical relating to alcohol advertisements. This has been demonstrated in other sectors. We believe that they can handle any complaints regarding non-compliance by the alcohol and media industry.

C. CONCLUSION

Given the above mitigating measures, we submit to the committee that there are adequate measures in place, both in law and practice, to mitigate against exposure of minors and other vulnerable persons in the community from access and consumption of alcohol. More focus should be put in driving compliance and enforcement by all the players as there is already sufficient regulations and legislation to support the protection of this group of people. The bill will increase the statutory compliance complexes without any added benefit to those persons it is seeking to protect. In addition, implementing the provisions as proposed without the relevant authorities first conducting a regulatory impact assessment will result in debilitating effects to the economy and employment in the creative industry in Kenya (media, designers, programmers, actors, producers, film, photographers etc).

Its worth noting that not all alcoholic products are advertise and yet minors have access to those kind of products. For example, *Chang'aa*, *Busaa* etc are readily consumed by minors and adults yet they are never advertised in any media. This goes to show that more emphasis should be put on enforcement and not burdening legitimate industry players with overregulation.



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D. OUR RECOMMENDATIONS ON ADCA BILL 2019

No.	Clause/reference in Bill	Proposal	Rationale/ Justification for proposal
1.	Amendment of section 68 of No.4 of 2010	Ministry of Interior should conduct a Regulatory Impact Assessment (RIA) on the proposed bill as provided for in the Statutory Instruments Act 2013	The hours within which electronic advertisement of alcoholic drinks shall be done has a value chain impact on a number of stakeholders including but not limited to Alcohol manufacturers and Importers and Advertising firms. A regulatory impact assessment, which is a legal requirement under the Statutory Instruments Act 2013, would demonstrate the impact of the proposal to in the bill on the value chain.
2.	Amendment of section 68 of No.4 of 2010	<ul style="list-style-type: none">Delete Section 3 of the Alcoholic Drinks Control (Amendment) Bill, 2019.Adopt the Guidelines on Alcohol Industry Advertising developed in the past by the Ministry of Trade, Ministry of Information & Communication and the Alcoholic Beverage Association of Kenya (ABAK) (<i>See attached Appendix 1</i>)	<p>There are adequate measures, both in law and practice, already in place to mitigate against exposure of minors and other vulnerable persons in the community from consumption of alcohol, i.e.</p> <p>a) Section 48 of ADCA prohibits the use of media to disseminate any alcoholic drink promotion that is prohibited</p> <p>b) The ADCA 2010 under sections 21, 24, 28, 29, 46 acknowledge the offences related to sale, promotion, employment or allowing access to alcoholic products to persons under the age of eighteen and provides penalties and fines for those convicted of such offences.</p> <p>c) Section 45 of ADCA 2010 restricts promotion of alcohol drinks in a way that creates a false impression</p>



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No.	Clause/reference in Bill	Proposal	Rationale/ Justification for proposal
			<p>that consumption of alcohol is linked to social, therapeutic, health or sexual success</p> <p>d) All our advertisements contain health messages as stipulated under the second schedule of the ADCA 2010</p> <p>e) All our packaging material clearly communicate that our products are not meant for consumption by minors as stipulated in the law</p> <p>f) All our advertisement campaigns that have prize competition go through a vetting process by NACADA multi-agency committee before being broadcasted.</p> <p>g) County Alcoholic Drinks Control laws provide for stiff sanctions against indiscriminate advertisement and access to alcoholic products by children and vulnerable groups.</p> <p>h) KBL/UDV and all industry stakeholders adhere to the administrative guidelines developed between the alcohol industry and government in 2010</p>
3.	Section 2 of the Alcoholic Drinks Act No. 4 of 2010	<p>Change the term "Minister" to "Cabinet Secretary" with the definition as follows</p> <p>"Cabinet Secretary means Cabinet Secretary for the time being responsible for matters of Interior</p>	Alignment with the Constitution of Kenya 2010



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No.	Clause/reference in Bill	Proposal	Rationale/ Justification for proposal
		and Coordination of National Government in Kenya."	
4.	Section 2(a) of the Alcoholic Drinks Control (Amendment) Bill, 2019	Delete the Section 2(a) of the Alcoholic Drinks Control (Amendment) Bill, 2019	<p>a) The provision takes away alcohol industry right to claim the national values provided in the Constitution of Kenya (Article 10). The provision seems to indicate that manufacturers of products targeted to consumers who are at risk of consuming of illicit alcohol cannot claim that the development of such a product has enhanced national values such as sustainable development, human dignity, equity and social justice.</p> <p>b) Alcohol manufacturing adds significantly value to the economy by promoting agriculture, logistics, employment, retail, creating synergies with other manufacturers (glass, packaging, additives), food and beverage industries, tax contribution</p> <p>c) The provision prejudices our Corporate Social Responsibility (CSR) which falls within sustainable development national values.</p> <p>d) It is not clear what challenges this provision is trying to address</p>



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Appendix 1:

Guidelines on Alcohol Industry Advertising
developed in the past by the Ministry of Trade,
Ministry of Information & Communication and the
Alcoholic Beverage Association of Kenya (ABAK)

GUIDELINES ON ALCOHOL INDUSTRY ADVERTISING

ADVERTISING RULES FOR ALCOHOL COMPANIES

The Ministry of Trade and Industry, together with the Ministry of Information and Communications and the National Alcohol Beverages Association of Kenya (NABAK), a consortium of licensed Alcohol Beverage Companies in Kenya, support the position that the Alcoholic Beverages Industry is best placed to monitor and self-regulate the way brands are marketed in order to promote responsible consumption of alcohol in Kenya. Following consultations between NABAK and the Ministries of Trade & Industry and Information & Communications, it was agreed that all companies advertising alcoholic beverages adopt the guidelines listed below for self-regulation. All players in the Alcoholic Beverages Industry will be required to abide by the guidelines without exception in all their alcohol-advertising campaigns. The guidelines are effective immediately and players in the industry are expected to start complying henceforth.

1. Alcohol Beverage Advertising Schedules

All alcohol beverage advertising on television must be post 8.30pm on all days of the week. Radio advertising to be post 1.00pm on all days of the week. The purpose is to reduce exposure of such advertisements to children.

2. Moderate Consumption Caution

No alcohol beverage advertisement should show any sort of intoxication from alcohol or indicate intoxication from alcohol. Words, statements and/or visuals that insinuate intoxication from alcohol will not be used in advertisements. Alcohol beverage advertising should depict moderate and responsible consumption of alcohol.

3. Abstinence from alcohol

Advertisements will not present abstinence in a negative light, or imply that it is wrong or foolish to refuse a drink. Neither will advertisements imply that it is not trendy or "in tune" with the times to abstain from alcohol consumption.

4. Socially Offensive Communication

Alcohol beverage advertisements need to be sensitive to the variations in cultural sensitivities in Kenya. Advertisements should not contain any images, symbols or figures which are likely to be considered gratuitously offensive nor demeaning to either gender, or to any race, religion, culture or tribe.

5. Under 18 (Legal Drinking Age) Consideration

The Alcohol Beverages Industry must ensure that people under Legal Drinking Age are not included in market research and/or consumer planning, while the content of advertising and marketing materials should never be designed nor constructed in a way that appeals primarily to individuals below the Legal Drinking Age. This guideline prohibits the use of cartoons and fairy tale characters in advertisements or sponsorships of children only events.

6. Alcohol Potency

Alcohol Beverage Companies will not place undue emphasis on high alcohol content as the principal basis of appeal to the consumer. Alcohol Beverage Companies will give factual information about the alcoholic strength of a drink, which may help consumers to make informed decisions. Alcohol Beverage Companies will only refer to alcohol strength in an accurate, factual manner.

7. Therapeutic Value of Alcohol

Alcohol Beverage Companies will not promote alcohol products so as to be perceived as having therapeutic value. Advertising and promotional material will not imply that alcohol has the ability to prevent, treat, or cure any human disease. Health claims should not feature in any brand advertising, promotions or brand PR. Advertising should never imply that the industry encourages consumers to adopt weight maintenance or weight loss. Advertising and marketing material will not depict or be directed at pregnant women, nor will they create the impression that alcohol consumption enhances mental ability or physical performance, e.g., when engaging in sports. No Alcohol Products will be positioned as 'energy drinks'.

8. Drinking, Driving and Operating Machinery

No communication should imply that the consumption of alcohol is acceptable before or whilst operating machinery, driving a vehicle or undertaking any other occupation that requires concentration in order to be carried out safely. Advertising and marketing activities should not imply that it is acceptable to consume alcohol before or while playing sports, or engaging in activities that require concentration in order to be carried out safely.

9. Social and Sexual Success as a result of the Consumption of Alcohol

All advertising and promotional communication should not create a link between alcohol consumption and 'social or sexual success'. Although certain alcoholic beverage products may be preferred by consumers over others due to taste, Alcohol Beverage Companies will ensure that advertisements and promotional material do not imply that alcohol beverage consumption enhances social or sexual success. Sexually lewd, graphic or indecent language and images are also not permissible. Marketing and advertising material should not imply that consumption of alcohol is a requirement for social acceptance.

10. Anti-social Activities

Communication will not suggest any association with violence or with anti-social behaviour. The language used in advertisements or other brand communications will not contain any direct or indirect references to drug culture or illegal drugs.

The following organisations endorse industry self-regulation as a principle that can promote responsible consumption of alcohol in Kenya.

- Marketing Society of Kenya (MSK)
- Advertising Practitioners Association (APA)
- Kenya Association of Manufacturers (KAM)
- Public Relations Society of Kenya (PRSK)
- Media Owners Association (MOA)

NABAK is an alcohol beverages industry association comprising Kenya Wine Agencies Ltd., Wines of the World, EABL and London Distillers as founder members. The objective of the association is to promote self-regulation and minimize alcohol-related harm by advocating for responsible consumption.



MINISTRY OF TRADE & INDUSTRY

Mukhisa Kifuyi
Hon. Mukhisa Kifuyi



Nabak
National Alcohol Beverages Association of Kenya
Responsible & Self-Regulation Initiative

Gerald Masila
Mr. Gerald Masila



MINISTRY OF INFORMATION
& COMMUNICATIONS

Mutahi Kagwe
Hon. Mutahi Kagwe



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Appendix 2:

Alcohol Beverage Association of Kenya (ABAK) Marketing Code



Alcoholic Beverages Association of Kenya
Responsibility & Self Regulation

THE RESPONSIBLE Marketing CODE

1. Preamble

The Alcohol Beverages Association of Kenya (ABAK) is an umbrella body that brings together Kenya's leading manufacturers and distributors of alcoholic beverages. ABAK exists to support self-regulation of the alcohol industry by providing training, information and technical expertise to government agencies, consumers, value chain players and the society at large.

As leading alcoholic beverage producers and distributors in Kenya, we communicate to a number of consumers, colleagues, customers, clients and suppliers every day. As such, it is imperative that our communications not only reflect the passion and respect we bring to our work, but also the fact that we take our responsibilities seriously.

The majority of our consumers sensibly enjoy our products, but there will always be a minority who misuse them. Our marketing communications, therefore, needs to be clear about whom our products are targeted at, and how to enjoy them in a responsible manner

2. Objectives

The Responsible Marketing Code (the code) goes to the heart of our commitment in self-regulation. It is about being legal, decent, honest and truthful in the way we market our brands so that, as an industry, we can help address social issues such as drinking & driving, underage drinking and heavy episodic drinking. The code does not serve to summarize or substitute national laws, policies or codes, which must always be upheld. It explains ABAK's approach to self-regulation.

The code's purpose is not to curb marketing freedom and creativity - it is here to protect us.

3. The Scope

Marketing communications is defined as: "communications produced directly by or on behalf of marketers, in-tended primarily to promote products regardless of the medium used". These include brand advertising, consumer communications, promotional events, packaging, labels, sponsorship, "advertorials", and point of sale materials.

The provisions of the code apply to every type of media, including digital media. These provisions also apply to every type of promotional or marketing activity or event, including all product placement and sponsorships.

The definition of marketing communications does not extend indiscriminately to every type of commercial or corporate communication. For instance, it does not include non-paid press articles, information in annual reports and the like, or corporate public affairs messages in press releases or statements to the media, government agencies or the public about matters of societal concern, such as the risk or benefits related to the consumption of alcohol, or educational messages about responsible drinking or the role of alcohol in society.

How Will We Use It?

The code will help safeguard our brands' reputation and our freedom of expression in all of our consumer-facing brand activities and across all our alcohol brands.

Where Will We Use It?

The code covers all sorts of communications channels, the most common being: packaging, point of sale, signage, trade promotions, sponsorships, advertising, digital and social media, as well as any new channels and technologies that might be created.

Who Will Use It?

The Code Will Be Adhered To By All ABAK members and our partners

4. Compliance

Adhering to the Code is mandatory. Every ABAK member must implement and abide by the Code and must ensure that everyone involved in the Marketing and Sale of our brands complies to the letter. Every member must ascertain that:

- All correspondence regarding complaints received about a particular commercial communication, activity or event, is properly addressed and stored;
- All complaints in relation to commercial communication, trade marketing and sales are registered for audit purposes;
- Annual training on this Code is conducted for our teams involved in marketing and selling our brands and for our agencies teams;
- Legal and Corporate Relations are consulted when in doubt.

Members or partners who fail to abide by The Code will expose themselves to sanctions imposed in accordance with the constitutional documents of ABAK.

5. The Guiding Principles

i. Compliance with applicable Laws, Regulations and Policies

- Our marketing communications shall at all times comply with all laws, regulations and policies applicable in Kenya.

ii. False Promotion

Our marketing communications should:

- **not** promote our products so as to mislead consumers under any circumstances. That is, our marketing shall not imply that our alcohol brands offer any health, functional, sexual, therapeutic, dietary, energy, endurance or performance benefits.
- **not** under any circumstances imply that our products are beneficial to pregnant women.

iii. Adult Appeal

Our Marketing Communications should:

- target only adults and never target those younger than 18 years;
- never be constructed and designed to primarily appear to individuals younger than 18 years;



- avoid the use of themes, icons, music, games, or characters that appeal primarily to those younger than 18 years;
- avoid showing people younger than the age of 18 (or people likely to be perceived as minors) drinking alcoholic beverages;
- only portray actors, models and brand ambassadors who are at least 21 years old or reasonably appear to be older than 21 years;
- avoid corporate social responsibility activities to those under the age of 18 years as it can be misconstrued as indirect marketing.
- be placed only in media during watershed period where at least 70% of the audience is reasonably expected to be above 18 years old.
- market or consumer research activities should not be conducted among people below the legal drinking age of 18 years.

iv. Responsible Consumption

Our marketing communications should:

- **not** encourage irresponsible consumption through advertising and promotions.
- **not** refer to inebriated/intoxicated behavior as favourable in any of our advertising and promotional material.
- always demonstrate moderate consumption in our advertising and promotions.
- **not** advocate that consumption of an alcoholic drink is acceptable before or while engaged in driving, operating machinery, sports or other activities that require concentration in order to be carried out safely.
- **not** promote or present abstaining from alcohol or moderation when drinking alcohol in a negative manner or imply that it is wrong to refuse a drink.
- **not** advocate for or depict people drinking heavily or rapidly, or depict people in our marketing activities who are already intoxicated, or imply that such behaviour is attractive or appropriate.

v. Good Taste and Decency

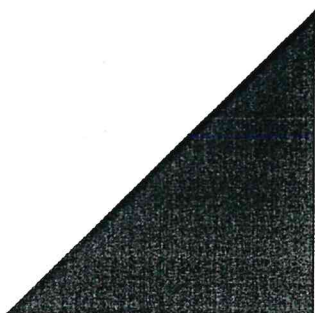
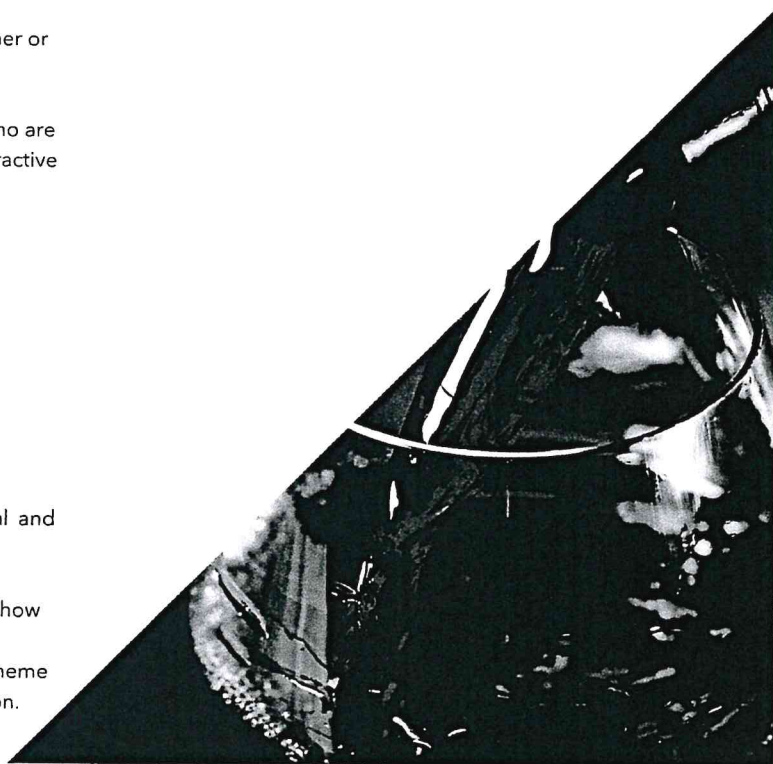
Our Marketing Communications should:

- always depict our products as decent and respectable.
- **not** associate our products with indecent or offensive material.
- **not** associate our products with illegal substances.

vi. Product Ingredients and Alcohol Content

Our Marketing Communications should:

- present factual information about our product ingredients
- where practical and permitted by law, provide clear, factual and neutral information about the alcohol content of our brands.
- **not** support or utilize promotional activities, packaging or drink delivery ideas that mean consumers cannot readily tell or control how much alcohol they are consuming.
- **not** present high alcohol strength or potency as the dominant theme or principal basis of appeal of any marketing or product innovation.



vii. Health Messages

Our marketing communications should:

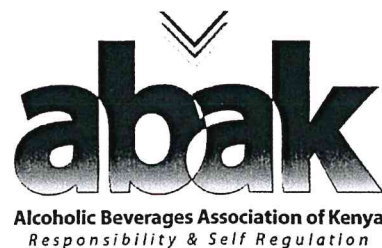
- align to statutory requirements contained in the Alcoholic Drinks Control Act, 2010.
- include health messages on advertising and promotional material.

viii. Digital Media

- Marketing communications should only be placed on third-party sites where at least 70% of the visitors to that website are older than 18.
- A range of available technologies may be used to target adult audiences in digital media and to prevent access to those who are younger than 18 years, e.g. age-gates on websites.
- Relationship marketing should not be sent to any individual younger than 18 years, e.g. promotional emails.
- All content that is designed to be forwarded or shared by users should include a Forward Advice Notice (FAN) instructing recipients that they should not forward the content to those younger than 18 years, e.g. emails.
- User Generated Content (UGC) posted on alcohol beverage company-controlled platforms should be moderated on a regular and frequent basis and inappropriate content removed.
- Alcohol beverage company-controlled digital platforms (e.g. websites, Facebook, etc.) should include a clearly visible Responsible Drinking Message (RDM) which explicitly advocates responsible drinking.

ix. Brand Ambassadors

- We commit to treat our Brand Ambassadors with respect.
- Brand Ambassadors will be provided with decent uniforms to represent our brands.
- Brand Ambassadors will be treated humanely and paid sufficiently.
- Brand Ambassadors should be over the age of 21 years. They must represent our products with maturity and decency.



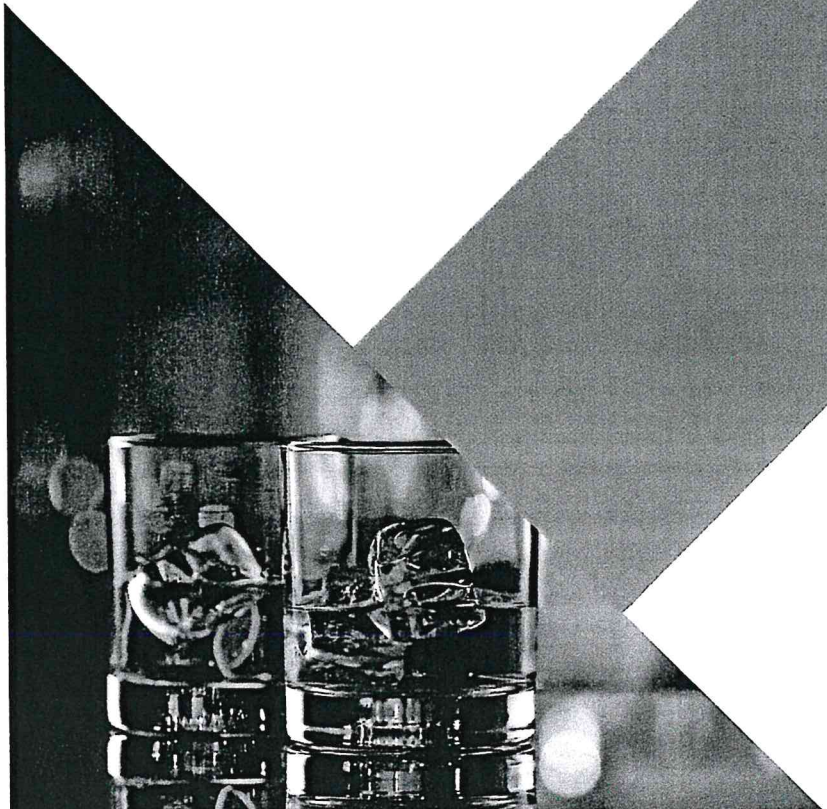
The Members of the Association adopt the Responsible Marketing Code and resolve that they shall be guided by the principles therein in all their marketing activities.



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I INTRODUCTION

Diageo has a proven history of ensuring our brands are advertised and marketed responsibly. We want Diageo's marketing and promotional activities to be recognised as the best in the world.

Our brands are made with pride and made to be enjoyed responsibly. We want to inspire consumers around the world to drink better, not more, because alcohol in moderation plays a positive role in social occasions and celebrations. However, we recognise that harmful drinking creates problems for individuals and for society.

The Diageo Marketing Code (DMC) is our minimum global standard that applies to all of our activities that communicate about and market our brands, regardless of media. Compliance with the DMC is mandatory for all employees of Diageo, our subsidiaries and joint ventures where Diageo has a controlling interest. It also applies to third-party agencies, contractors, third-party distributors and consultants engaged by Diageo who help market our brands.

The Code supports our approach to innovative marketing and the entrepreneurial spirit of our marketers, while at the same time ensuring we stay true to our core values and market responsibly to adults. There are eleven principles that guide all of our marketing. At the heart of these is our commitment to ensuring all our activities depict and encourage only responsible moderate drinking, and never target those who are younger than the legal purchase age for alcohol.

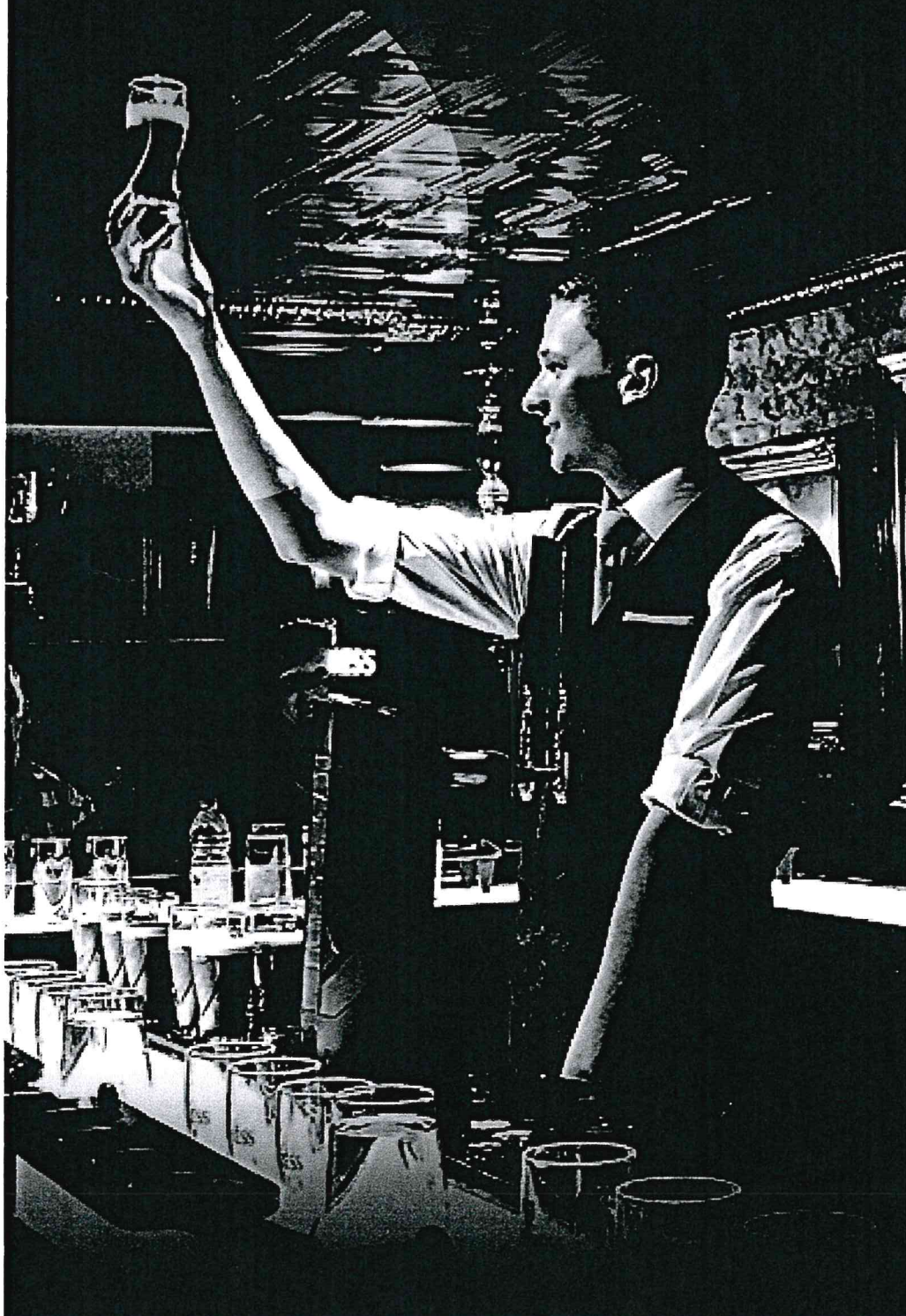
We consider this Code to be an enabler of great creativity. We hope it inspires all our stakeholders to continue to work together with us, to deliver responsible alcohol marketing and effective self-regulation across the industry and the globe. In addition, we hope the DMC, which often sets higher standards for alcohol marketing than what is required by law, will help us achieve our ambition to be one of the best performing, most trusted and respected consumer products companies in the world.

Syl Saller

Chief Marketing Officer

DIAGEO

MARKETING CODE



PROMOTING RESPONSIBLE DRINKING



Kenya Breweries Limited | UDV (Kenya) Limited
Subsidiaries of the EABL Group



Appendix 3: KBL/UDV Marketing Code

This Code applies to all activities intended to market our beverage brands. This includes, but is not limited to:

- market research
- brand innovation and product development
- brand names and packaging
- trade advertising
- sales materials
- consumer advertising, brand-related media or communications, and relationship marketing
- digital, mobile and social media
- product placement and branded entertainment programmes
- brand sponsorships
- branded merchandise
- promotional activities in the on/off-trade
- experiential marketing and events
- cocktail names and drink recipes

The term 'marketing' is used throughout this Code to cover all these activities, and any other activity designed to market our beverage brands. This Code is not intended to apply to Diageo communications providing health and nutritional information about alcohol products on non-branded sites.

This updated Code replaces all previous versions of the Diageo Marketing Code, with effect from 1 July 2019.

Please refer to the Diageo Digital Code for further guidance regarding digital marketing and related technical requirements and safeguards.

1

LAWS, CODES AND ETHICS



Our marketing must:

Conform to high standards of business ethics and commercial integrity.

Comply with all applicable laws, regulation, industry codes and all other Diageo Policies.

Seek to promote diversity and inclusion.

- a. This Code sets out global minimum standards that apply everywhere.
- b. Our marketing must comply with the letter and spirit of all applicable national laws, local regulations and self-regulatory Codes of practice to which we are a signatory. Where local laws, regulations or Codes of practice impose additional or more stringent requirements, then those additional requirements must also be met.
- c. Our marketing must also comply with all other relevant Diageo Codes, policies and standards such as the Code of Business Conduct, the Digital Code, the Data Protection Global Policy, the Responsible Research Standard, and the Consumer Information Standard.

2

ABSTINENCE



Our marketing must:

Always show respect for those who choose to abstain from alcohol.

- a. We acknowledge that there are times in everyone's life when consuming alcohol may be unwise and that there are people who choose not to drink at all for a variety of reasons, including cultural and religious ones. We will always respect these individual choices and be aware of local values and sensitivities in this regard.
- b. We will not present abstinence from or moderation with alcohol in a negative manner, nor imply that it is wrong or foolish to refuse a drink, even in a humorous manner.

Promotions and events

- c. Our on/off-trade promotions will never pressure anyone to drink.



Our marketing must:

Be aimed only at adults and never target those younger than the legal purchase age for alcohol.

Be designed and placed for an adult audience, and never be designed or constructed or placed in a way that appeals primarily to individuals younger than the legal purchase age for alcohol.

- While some countries have a legal purchase age for alcohol beverages that is younger than 18 or may set no legal purchase age limit at all, it is Diageo's policy never to target our marketing activities at people younger than the age of 18. In countries with a legal purchase age older than 18 (e.g. 21 years in the USA), we will never target our marketing activities to people younger than this age.
- The term 'LPA' is used throughout this Code to mean the legal purchase age for alcohol or 18 where there is no LPA or where it is younger than 18.

Content

- a. Our marketing must never be designed or constructed in a way that appeals primarily to people younger than LPA.
 - i. 'Primary appeal' to persons younger than LPA may be judged as a special attractiveness to such persons above and beyond the general attractiveness it has for persons older than LPA.
- b. We will not use any image, symbol, language, gesture, music, cartoon character, person, sporting/entertainment celebrity, hero, or promotional prize or gift that appeals primarily to those younger than LPA.
- c. We will not license our brand names, logos, or trademarks for use on children's clothing, toys, games, games equipment, or other materials intended for use primarily by persons younger than LPA.
- d. We will not associate our brands with the attainment of, or 'rites of passage' to, adulthood.
- e. People appearing in our alcohol brand advertising must be over 25 years or older, and reasonably appear to be and be portrayed as 25 years or older. This also applies to non-alcoholic variants of existing alcohol brands.
 - i. People aged between LPA and 25 may be sponsored, and/or appear in PR, event and promotional materials, but not in advertising.

Placement

- f. We will place our marketing in communications media, events and third party websites only where a minimum 70% (75% for the UK & Ireland, and 71.6% for the US) of the audience can reasonably be expected to be older than LPA.
 - i. We will monitor the audience composition of media in which we advertise on a regular basis to ensure compliance to the highest practical level.
- g. We will take reasonable steps not to place advertising on any outdoor stationary location in close proximity to schools, except on licensed premises. Care must also be taken when considering locations in proximity to religious buildings or other locations that may be inappropriate given local sensitivities.
- i. We will use a range of available technology to target adult audiences in all branded digital media and to prevent access to those younger than LPA. See the Diageo Digital Code for more guidance on age-targeting in digital media.
- h. Diageo-owned Responsibility websites may be exempted from the above obligation if permitted by local law, in view of the fact that the sole purpose of such digital resources is not to market alcohol brands, but to inform people on the facts about alcohol.
- i. Relationship marketing must not be sent to any individual younger than LPA.
- j. All content that is designed to be forwarded or shared by users should include a Forward Advice Notice (FAN) instructing recipients they should not forward the content to individuals younger than LPA.

Sponsorship

- k. Diageo brands must not be used to sponsor sports, celebrities or events that appeal primarily to people younger than LPA.

Promotions

- l. People involved in promotions for our brands in the on/off-trade must be LPA or older.
- m. Our on/off-trade promotions and events must never be designed or constructed in a way that appeals primarily to, or offers our brands to, individuals younger than LPA.

Research

- n. No market or consumer research may be commissioned or conducted by Diageo among people younger than LPA.

See the Diageo Responsible Research Standard for further guidance.

* In the United States, no advertising will be placed within 500 feet of an elementary or secondary school, or an established place of worship.

** In the United States, we will not market our brands on college and university campuses except in licensed establishments

**Our marketing must:**

Depict and encourage only moderate and responsible drinking.

Incorporate responsible drinking reminders and/or initiatives.

Never depict, condone or encourage excessive or irresponsible drinking or refer in any favourable manner to the effects of intoxication.

- a. Marketing that depicts responsible drinking as a relaxed, sociable and enjoyable part of life has a role to play in promoting a responsible approach to drinking.
- b. We will not depict people drinking heavily or rapidly, or in a state of intoxication, nor imply that such behaviour is attractive or appropriate.
- c. We will not promote our brands with irresponsible cocktail names or excessive quantities of alcohol.

Promotions and events

- d. Our on/off-trade promotions will encourage responsible drinking for those adults who choose to drink, and will not support activities that encourage excessive drinking.
- e. We will not sponsor promotions involving drinking games that have speed incentives, or that require undue quantities of alcohol to be consumed.
- f. While there is nothing irresponsible about enjoying our brands neat, care needs to be taken in connection with the marketing and promotion of our brands as shots due to their potential to be consumed rapidly. A single shot may be enjoyed responsibly as part of an occasion, but we will not depict or encourage rapid or multiple shot consumption by individuals.
- g. We will not support or utilise promotional activities, packaging or drink delivery ideas that prevent consumers from understanding and controlling how much alcohol they are consuming.

Research

- h. Consumers in research will never be encouraged to drink excessive amounts, nor drink in an irresponsible way. If they are observed to drink in this manner, they will either be excluded from the research immediately or this part of the research will be stopped.



- i. Diageo will provide consumers in research situations with appropriate sources of information on responsible drinking (e.g. DRINKiQ.com).

See the Diageo Responsible Research Standard for further guidance.

RESPONSIBLE DRINKING REMINDERS AND INITIATIVES**Advertising**

- j. Clearly evident Responsible Drinking Reminders (RDRs) are required in all above-the-line advertising for our alcohol brands. This includes television, cinema, radio, outdoor, digital, print and any other above-the-line advertising activity.
 - i. RDRs are encouraged for below-the-line marketing where appropriate.
- k. Alcohol brands may use 'Drink Responsibly', a tailored RDR unique to the brand or campaign or local market, or a combination of these. Tailored RDRs, or other website addresses as RDRs, must be cleared through Corporate Relations and Legal. Markets with government-mandated health messages and/or warnings should consult Corporate Relations to see if an additional RDR is warranted.
 - i. DrinkiQ.com should accompany the RDR where possible.
- l. The format of the RDR should be appropriate to the advertisement.
 - i. Television and cinema advertisements may include a clearly audible voice-over RDR, and/or a clearly visible RDR within the advertisement.
 - ii. Digital advertisements must use visual RDRs. Dynamic online banner ads that rotate through a series of 'frames' need only include the RDR in one of those frames.
- m. The size and placement of the RDR will depend on the piece of advertising and its location but must be clearly evident.
 - i. In printed and on-screen material, the RDR should be clearly distinct from the mandatory information required by regulations, and should not be placed in any area or in any manner that is not readily visible and readable to consumers i.e. messages should not be placed vertically (sideways) on a page or billboard, or in the seam of a magazine, etc.

*In the United States, 20% of Diageo's broadcast advertising will focus exclusively on responsible drinking themes.



ALCOHOL CONTENT



- n. Every Diageo brand website must include on the footer of every page a link to Diageo's online responsible drinking resource, DRINKIQ.com

Sponsorships

- o. Appropriate responsible drinking reminders must be included in all sponsorship activities.
- p. Sport sponsorships must incorporate a prominent responsible drinking initiative.

Promotions and events

- q. Our promotions and events should incorporate responsible drinking reminders or initiatives.
- r. People involved in the promotion of our brands must be briefed about Diageo responsible drinking and promotions standards.

Labels

- s. Where legally permissible, all new back labels and secondary packaging must include at least one and up to three responsible drinking symbols, a reference to Diageo's online responsible drinking resource DRINKIQ.com, a list of allergens, alcohol content and recycling, and sustainability symbols.

See Diageo Consumer Information Standard for further guidance.

Our marketing must:

Via packaging, websites, and other appropriate channels, provide clear, factual and neutral information about the alcohol content of our brands and drinks recipes, where permitted by law.

Never present high alcohol strength or potency as the dominant theme or principal basis of the appeal of any marketing or product innovation.

Not imply that lower-strength alcohol beverages may be consumed in ways or situations that would be inappropriate with higher strength beverages.

- a. We will, where possible and permitted by law, provide factual and neutral alcohol content information on our packaging and via other channels such as websites (including DRINKIQ.com) and consumer care-lines.
- b. When promoting drink recipes, we will include specific liquid measures (e.g., '30ml' or equivalent local measurement rather than 'one part'), and the total alcohol content (in 'grams of alcohol' or locally recognised measure such as 'standard drinks'/'units'), expressed per serving.
- c. High alcohol strength or potency must never be the dominant theme or principal basis of the appeal of any marketing or product innovation.
- d. We will never imply that mid or lower strength beverages may be consumed in quantities, ways or situations where higher strength beverages may be inappropriate, nor that mid or lower strength beverages are healthier or more responsible choices.

HEALTH, THERAPEUTIC, PERFORMANCE OR FUNCTIONAL BENEFITS



Our marketing must:

Not imply that our alcohol brands offer any health, therapeutic, dietary, functional or performance benefits.

Not imply any energy or endurance benefits, nor that alcohol is the catalyst for any change in mood or state.

Not portray or target pregnant women.

- a. We will where practicable and permitted by law, provide factual and neutral nutritional information about our products, via appropriate channels such as DRINKIQ.com.
- b. We will not imply that drinking alcohol leads to any health, dietary or functional benefits, nor that alcohol may play a role in managing weight or as part of a fitness regime, nor that consumers may consume low(er) calorie or carbohydrate beverages in excessive amounts.
- c. We will not imply that drinking alcohol enhances virility, mental ability or performance, skills or strength.
- d. We will not promote alcohol as a medicine, nor imply that alcohol has the ability to prevent, treat or cure any human disease or condition.
 - i. We will not use gifts, drinking vessels or cocktail names with medical or pharmaceutical connotations to market our brands.
- e. We will not market our alcohol brands to pregnant women nor portray pregnant women in our marketing.
- f. Our products must avoid any dominant theme or principal basis of appeal on the grounds of health, sexual or other similar functional benefits.
 - i. However, if using ingredients with such perceived qualities, we must only use sufficient quantities necessary for the purpose of delivering a specific flavour. On packaging and in promotional materials, we may reference such ingredients, but we may not make any claims (whether explicit or implied) that these ingredients confer any health or functional benefits.
 - ii. For exceptions applicable to Non-Alcoholic Beverages, see Section 11.
- g. We will not market our alcohol brands as energy drinks, nor imply that consuming them (either alone or with a specific mixer) delivers energy or endurance benefits.
 - i. We will not advertise or promote our brands in a way which implies that drinking alcohol will increase stamina, make the night last longer or give a boost, nor use suggestive drink names which imply energising, stimulating or invigorating properties.

- ii. If co-promoting our alcohol brands with an energy drink mixer, the mixer must be treated in a neutral manner just like any other mixer, no energy claims may be made, and particular care must be taken with the imagery used.

- h. Our alcohol brands may be portrayed as the perfect choice for already energetic or relaxing occasions, but we will not imply that they are the catalyst for any change in energy, state of alertness or states of mental or physical relaxation.
- i. We will not market our alcohol brands as thirst quenching or hydrating, nor imply or suggest that they be consumed instead of non-alcoholic beverages.
- j. Where legally permitted, claims about nutritional qualities, ingredients or specific production methods of our brands (for example sugar-free, dairy-free, organic) may be made if they are accurate, substantiated, and neutral in relation to health.
 - i. For exceptions applicable to Non-Alcoholic beverages, see Section 11

SOCIAL AND SEXUAL SUCCESS



Our marketing must:

Not portray or imply that drinking is necessary to obtain social or other success, nor to overcome inhibitions or to be socially accepted.

Not portray or imply that drinking enhances sexual attractiveness or is a requirement for sexual success.

- a. Our brands may be portrayed as part of normal social experiences, such as the depiction of people who appear to be attractive or affluent, or people who appear to be relaxing or in an enjoyable setting. Brand preference may be portrayed as a mark of discernment or good taste.
- b. However, our marketing materials will not imply that drinking is necessary to obtain social, professional, educational, athletic, financial or other success, nor to solve social, personal, or physical problems, nor to overcome inhibitions, shyness or social barriers, or to be socially accepted.
- c. Our marketing may also portray our brands as part of a social or romantic setting, or people showing affection or other amorous gestures. However, we will ensure that our marketing does not imply that drinking enhances sexual attractiveness or is a requirement for sexual success. Implicit sexual activity, seduction scenarios, gender stereotyping and prizes or gifts that breach the spirit of these provisions must all be avoided.

DRINK DRIVING AND OTHER POTENTIALLY DANGEROUS ACTIVITIES



Our marketing must:

Only portray drinking in safe and appropriate circumstances.

Never portray drinking before or whilst driving motor vehicles, operating machinery, or any other similar activity or situation.

- a. We will not depict drinking before or during activities, or in situations or locations, where drinking alcohol beverages would be unsafe or unwise.
- b. In particular, our marketing must not imply that drinking alcohol is acceptable before or while operating machinery, driving a vehicle or undertaking any other occupation, endeavour, or sporting activity that requires a high degree of alertness or physical coordination in order to be carried out safely.
- c. It is fine to show adults enjoying a drink after playing sports or after engaging in any occupation or endeavour referred to above, provided it is clear the activity will not be resumed.
- d. This provision does not apply to non-alcoholic brands. For further detail see provision 11.

ANTI-SOCIAL OR INAPPROPRIATE ASSOCIATIONS



Our marketing must:

Not portray or suggest any association with anti-social or illegal behaviour.

Not portray or suggest any association with violence.

Not portray or encourage the consumption of tobacco.

- a. Our marketing will not portray or suggest any association with anti-social behaviour, nor depict situations where beverage alcohol is being consumed illegally or in conjunction with explicit or implicit illegal activity of any kind.
- b. We will ensure that our marketing does not portray or suggest any association with violence, including not trivialising problems associated with violence or glamorising violence.

- c. We will not associate our brands with any activity or event where the intent is to cause harm or violence to anybody, including animals.
- d. We will not portray or encourage the consumption of any tobacco products (including e-cigarettes or other vaping products), nor brand or offer tobacco products or accessories as promotional gifts or prizes, nor sponsor tobacco-related events.
 - i. We will allow appropriate brand participation, such as sampling, at cigar-related venues and events, provided the brand participation is not linked to the purchase or consumption of tobacco products.
 - ii. We will not use our brands in any joint marketing activities, or in any consumer-facing promotions, involving tobacco products.
- e. Particular care and consideration of local sensitivities must be taken when assessing whether to associate our brands with gambling.

GOOD TASTE AND DECENCY



Our marketing must

Reflect generally accepted contemporary standards of good taste and decency.

Be judged from the perspective of the broader society – locally and globally.

Be sensitive to local and cultural variation.

- a. We must evaluate proposed marketing activities not solely from the perspective of the target audience, but from the perspective of the broader society - locally and globally - in which Diageo operates.
- b. Our marketing must not employ themes that may seem harmless in one market but that may cause grave offence in another market or culture.
- c. Our marketing activities must always be respectful of, and sensitive to, diversity of race, religion, colour, ethnicity, national origin, disability, sexual orientation or gender. Whenever possible, we will take action to actively promote diversity and inclusion and avoid inappropriate stereotypes.
 - i. We have a zero-tolerance approach with respect to abuse and sexual harassment of Brand Promoters i.e. employees and third-party agency staff who promote our brands in outlets, as stated in Diageo's Brand Promoter Standard.

NON-ALCOHOLIC BEVERAGES



Our marketing must

Only promote Non-Alcoholic Beverages to adults.

Clearly distinguish non-alcoholic variants of our brands from those containing alcohol, via packaging, labelling and brand communications.

Definitions

This provision uses the following definitions:

- i. Non-Alcoholic Beverages (NABs) are generally those with an ABV (Alcohol by Volume) of 0.5% or lower.
 - Legal definitions of Alcohol-Free and similar descriptors may vary across countries. Brand teams are advised to always check with their Local Legal Counsel.
- ii. New-To-World (NTW) products: Those NABs that are not a variant of an existing alcohol brand and that don't feature names or properties commonly associated with our alcohol brands.

Adult Appeal

- a. Section 3 of this Code applies to all NABs with the exception of Section 3(e) which does not apply to NTW products.

Health and Functional Benefits

The provisions of section 6 of this Code apply to all our NABs, with the following exceptions:

- b. All NABs may claim attributes such as "refreshing" or "thirst-quenching" if legally permitted, factually correct and substantiated.
- c. Only NABs that are NTW may make limited claims about other functional qualities related to specific ingredients, if factually correct, legally permissible and substantiated. However, care must be taken to ensure that no brands are presented as medicine or being capable of treating or preventing disease.

Designated drivers

- d. Section 8 of this Code does not apply to NAB. We may present such beverages as a responsible choice for designated drivers, taking into account local laws and conditions.

Placement in store

- e. We will recommend to retailers that all NABs can be placed either in the alcohol beverage section of retail shops and/or in other areas that are principally targeted at those above the LPA, where permitted by law and taking into consideration rules under section 3 of this Code on Adult Appeal.

Responsible Drinking Reminders

- f. NABs are exempt from section 4 about Responsible Drinking Reminders.

RESPONSIBLE DRINKING INITIATIVES

We work in a range of ways with many different stakeholders to promote responsible drinking and combat alcohol misuse such as drink-driving, excessive drinking, underage drinking and irresponsible serving of alcohol. DRINKIQ.com is our online global resource that supports this work through the sharing of best-practice tools, information and initiatives.

We also encourage our in-market companies and global brand teams to develop and implement consumer initiatives designed to reduce alcohol related harm.

These initiatives are also subject to this Code. However, where these initiatives seek to portray the consequences of irresponsible or excessive drinking then, in consultation with Corporate Relations, the following Code provisions may be applied flexibly, only in the manner specified below, in order to ensure optimally effective consumer awareness initiatives:

- Provision 3 to allow people aged LPA+ to appear in corporate-branded responsible drinking advertising;
- Provision 3 on Adult Appeal to exempt unbranded Diageo owned websites such as DrinkIQ.com from the obligations to set an age affirmation mechanism, considering that the purpose of such resources is not to market alcohol brands but to educate and inform people on the facts about alcohol.
- Provision 4 to show the downside or consequences of excessive or irresponsible drinking;
- Provision 8 to show the downsides or consequences of drink driving or other similarly dangerous activities; and
- Provision 9 to show potential downsides or consequences associated with excessive drinking, such as violence, aggression or anti-social behaviour.

MARKETING CODE COMPLIANCE

Compliance with the marketing Code is mandatory for all employees of Diageo, our subsidiaries and joint ventures where Diageo has a controlling interest.

It also applies to third party agencies, contractors and consultants engaged by, representing or acting for (or on behalf of) Diageo, and our third party distributors who are responsible for or are involved in the marketing activities and marketing of our brands.

We must follow all provisions of this Code and should never cause, authorise or overlook breaches of the Code by others. Our in-market companies may strengthen this Code to address different or specific issues in their market.

These provisions must be in addition to, not in place of, the standards set out in this Code:

Responsibility

- a. All aspects of Code compliance are the fundamental responsibility of the general manager and marketing director in all our in-market companies, and global brand teams.
- b. Advertising, promotions and PR agencies, market research companies, media buyers, and all other external marketing suppliers, must receive a copy of the DMC and must undertake to abide by its provisions in any work they do on our behalf. The requirement to comply with the DMC must be included in the written terms and conditions of all marketing supplier contracts and in all activity/project briefs. Diageo project leaders are also responsible for briefing and guiding their suppliers and for ensuring they comply with the DMC throughout the term of the project.

Review and approvals

- c. Marketing directors are accountable for ensuring that their teams follow an effective DMC sign-off process to ensure that all materials released in their territory fully comply with the letter and spirit of the Code.
 - i. DMC review and sign-off must also be included at each key stage of the innovation process.
- d. Diageo's online approval tool, Diageo Content Hub, must be used to facilitate DMC review and archival of approvals wherever possible.
- e. If the evaluation of a DMC-related issue reaches a stalemate, the decision must be escalated in the following manner (depending where the stalemate originates):
 - i. In-market Marketing and Corporate Relations Directors, if not resolved then to -

- ii. Global Marketing and Corporate Relations Directors.

If not resolved at this level, the Chief Marketing Officer makes the ultimate decision.

Training

- f. Our in-market companies and global brand teams must establish regular training programmes for all those involved in Marketing, Trade Marketing, Consumer Planning, Innovation, Corporate Relations and for relevant members of the Sales teams (Sales Directors as a minimum).
- g. Newly recruited staff should receive DMC training as part of their induction, and regular, in-depth refresher training must be provided for all relevant staff (every 12-24 months).
- h. DMC training should be offered to support supplier, agency, third party and distributor compliance where appropriate.

Controls

- i. DMC sign-off and compliance processes must be formally reviewed on an annual basis in every in-market company and global brand team.
- j. In case of a breach, an additional review should be undertaken immediately. Questions on interpretation or application of the DMC should initially be addressed to the in-market Corporate Relations and Marketing Directors. These can be further escalated to Global Corporate Relations and the Chief Marketing Officer if necessary.
- k. Any criticism of Diageo's marketing activities should be reported immediately to the in-market Corporate Relations and Marketing Directors, and the Global Head of Responsible Marketing and Innovation, in order to review the material in question, take remedial action if necessary, and ensure our commitment to responsible marketing and effective self-regulation is maintained.
- l. Any breach of the DMC is also considered to be a breach of the Code of Business Conduct and should be reported promptly through the routes described in the Code.
- m. Any material suspected to be in breach of the DMC will be reviewed and any breaches will be dealt with in accordance with the Diageo internal investigation policy and local disciplinary policies, as permitted by law.
- n. Diageo employees can also raise concerns with their line manager, local Controls, Compliance & Ethics Manager, Global Risk & Compliance, or make a confidential report using SpeakUp.

For further information on the Diageo Marketing Code or compliance issues, contact the in-market Diageo Corporate Relations team. Advice is also available from:

Head of Responsible Marketing & Innovation

Corporate Relations

Diageo plc

Lakeside Drive,

Park Royal,

London, NW10 7HQ, UK

Email: marketing.code@diageo.com

Copies of the Code, and further information can also be found at www.DRINKiQ.com

For the USA:

Diageo Corporate Relations

600 Pennsylvania Avenue, SE, Suite 304

Washington, DC 20003

Tel: 202 715 1105

Fax: 202 715 1114

For information about the Distilled Spirits Council of the United States (DISCUS), its Code of Responsible Practices for Beverage Alcohol Advertising and Marketing and its complaint procedure, visit:

www.distilledspirits.org

July 2019

The Alcoholic Drinks Control (Amendment) Bill, 2019

Executive Summary

In October 2019, the National Assembly of Kenya introduced the Alcoholic Drinks Control (Amendment), Bill 2019. The Bill seeks to introduce some amendments to the Alcoholic Drinks Control Act, 2010.

In this legal analysis, the Media Council of Kenya reviews the Alcoholic Drinks Control (Amendment) Bill, 2019 for its compliance with constitutional of Kenya, 2010 and international freedom of expression standards.

The Bill was proposed to empower the Cabinet Secretary to prescribe “the hours within which electronic advertisements of alcoholic drinks shall be done,” which the 2010 Act did not cover. The Bill also seeks to make additions to content that may not be included in a promotional advertisement.

Before commenting on the substance of the Amendment Bill, Media Council of Kenya notes that the alcohol industry spends a lot of money each year marketing its products. Children and youth are exposed heavily to this marketing with youthful teams and images and its placements in media with large youth audiences.

Thus, limiting children and youth exposure to alcoholic marketing is a major public health goal since underage drinking is a significant contributor to youth alcohol-related motor vehicle crashes, other forms of injury, violence, suicide and problems associated with school and family. However, from the onset, the Media Council of Kenya wishes to state that the prescribed policy solution in the Amendment Bill is wanting as will be elaborated in this analysis.

The Media Council of Kenya wishes to highlight that alcoholic advertising regulation can apply to measured and unmeasured media. Measured media encompasses traditional forms of advertising-electronic media (radio and television), outdoor billboard and signs, and print (magazines and newspapers). Regulation of these media can be either directed at the advertisement's content and/or its placement.

Content regulation focuses on what images and statements can be held in the advertisement, and placement regulation addresses where and when the ad can be shown in the public.

Unmeasured media include non-traditional venues for promoting a product: sponsorship of music concerts, sporting events, and other forms of entertainment and celebrations: consumer contests; prizes; giveaways; product placements in movies and television shows; novelties and other consumer items (e.g. logos on T-shirts, Umbrellas, diaries, notebooks, files, bags; and internet advertising, among other marketing activities. When dealing with unmeasured media, content and placement regulation merge.

Thus, the Amendment Bill seeks to place both a content and placement regulation. However, as a policy it will fail to meet the expected results of stemming the tide against high rates of underage alcohol consumption even as it does not pass a constitutional muster. An elaboration of the four main reasons suffices.

First, the Amendment Bill does not speak to the issue of counter-advertising as a critical strategy against underage drinking and smoking.

Second, it says something little on measured media and says nothing on unmeasured media yet the latter takes the bulk of alcoholic advertising revenue. A proper regulation must therefore address both content and placement concurrently.

Third and most important, content and placement regulation within the media (broadcasting, print) is undoubtedly a function of the National Government. However, within the national government, ARTICLE 34 (5) of the Constitution of Kenya creates a specific body under which the rubrics of setting media standards and enforcement falls. Therefore, placing the responsibility of determination of where and when alcoholic advertisements will be placed in electronic media in the hands of a Cabinet Secretary offends the constitution.

Fourth, by empowering of the Cabinet Secretary to determine the time when certain electronic advertisements on alcoholic drinks shall be placed, the Amendment Bill offends Article 34 (3) b of the Constitution of Kenya.

Article 34 (3) provides that broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that-

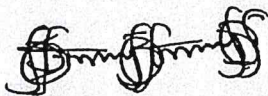
- a) are necessary to regulate the airwaves and other forms of signal distribution; and*
- b) are independent of control by government, political interests or commercial interests.*

Recommendations

The Media Council of Kenya has after consulting with the National Assembly embarked on the process of developing an Advertisers Code of Conduct and attendant advertising regulations. The regulations developed in consultation with the Ministry of Information, Communication and technology included input from Marketing Society of Kenya, Public Relations Society of Kenya, advertising agencies, the media and the academia. The regulations and the code of Conduct address the following 13 key areas:

- 1. Prohibit false or misleading alcoholic advertising;*
- 2. Prohibit alcoholic advertising that targets minors;*
- 3. Prohibit images of children in alcoholic advertisements;*
- 4. Prohibit images or statements that associate alcohol with nutritional value;*
- 5. Prohibit images or statements that associate alcohol with athletic achievements;*
- 6. Prohibit images and statements that portray or encourage intoxication on grounds that it is heroic or customarily approved;*
- 7. Establish explicit jurisdiction over in-state electronic media;*
- 8. Restrict outdoor alcohol advertising in locations where children are likely to be resent;*
- 9. Prohibit outdoor alcohol advertising near schools, playgrounds, places of worship*
- 10. Restrict alcohol advertising on alcohol retail outlet windows and outside areas;*
- 11. Prohibit alcohol advertising in tertiary institutions / college campuses;*
- 12. Restrict sponsorship of civic events; and,*
- 13. Limit giveaways (contest, raffles etc).*

We suggest that the National Assembly refers this Amendment Bill to the Communication, Information and innovation and the delegated legislation committees for consideration as they also assess the Advertisers Code of Conduct and regulations.



David Omwoyo Omwoyo

Chief Executive Officer and Secretary to the Council



MEDIA OWNERS ASSOCIATION OF KENYA

Empowering The Fourth Estate

5 March 2020

Michael R. Sialai, EBS
The Clerk of the National Assembly
Departmental Committee on Administration and National Security
National Assembly

Dear Sir,

REF: MEDIA OWNERS ASSOCIATION (MOA) SUBMISSION OF MEMORANDUM ON ALCOHOLIC DRINKS CONTROL (AMENDMENT) BILL, 2019

In reference to your request in a letter Ref: **NA/DCS/DCANS/2020/11** dated **25th February 2020**, Media Owners Association (MOA), makes the following written submission to this committee:

A. BACKGROUND

The Media Owners Association (MOA) is an authoritative umbrella body drawing membership from leading media houses and organisations in Kenya. These organisations conduct the critical function, in public interest of informing, educating and entertaining the public.

Electronic advertising in regards to broadcasting – Radio and Television continues to be one of the most effective platform to create awareness due to its capability to:

- a) educate, inform and empower consumers to be able to distinguish between genuine and counterfeit alcoholic products
- b) create awareness of new products in the market
- c) educate and create awareness on certain behavioural changes such as sanitation, personal hygiene, responsible drinking etc.

B. LEGAL FRAMEWORK ON ADVERTISEMENT

We agree that the broadcasting, production or circulation of media content should be regulated. We recognise and appreciate concerns of society including Government and are cognisant of the need to protect children. To this end, we have always supported lawful, effective, evidence-based and proportionate regulation that seek to promote the freedoms

of expression and the media freedoms while respecting the rights of audiences to information, education and entertainment.

The amendment to the Alcoholic Drinks Control Act No. 4 of 2010 seeks to empower the Cabinet Secretary to prescribe the hours within which electronic advertisement of alcoholic drinks shall be done. The objective and reason is in order to reduce the exposure to children and other vulnerable persons in the community such as recovering alcoholics of unsuitable content on alcohol consumption.

There is an already established and implemented legal framework and practice regulating the media industry, specifically on the matter of unsuitable advertisements or content for children and other vulnerable persons under a specific regulator – The Communication Authority of Kenya. This framework is contained in Kenya Information & Communication Act 2015, Kenya Information and Communication (Broadcasting) Regulations 2016, The Programming Code for Broadcasting Services in Kenya and the Administrative Guidelines on Alcohol Advertising.

1. Kenya Information & Communication Act 2015

The current legislation provides a number of measures in relation to broadcasting services such as functions of the Commission, requirements for granting of a broadcasting licence, programming, obligations of broadcasters, requirements for a complaints procedure among others. These provisions include:

- i. The functions of the Commission in relation to media services are provided for under Section 46A of the Act include promoting and facilitating the development, in keeping with the public interest, of a diverse range of broadcasting services in Kenya; administering the broadcasting content aspect of the Act; develop media standards; and regulating and monitoring compliance with those standards.
- ii. The issue of public interest is reiterated in Section 46D (2) where the Commission in considering the applications for grant of broadcasting licence shall have regard to the observance at all times of public interest obligations in all broadcasting categories.
- iii. Suitability of programming is also contained under the obligations of the Broadcasters under Section 46I of the need to provide responsible and responsive programming that caters for the varied needs and susceptibilities of different sections of the Kenyan community.

2. Kenya Information and Communication (Broadcasting) Regulations 2016

The regulations made under the Act in respect to broadcasting services specifically contain provisions that protect children against unsuitable content. These provisions include:

- i. Section 19 mandates a licensee to ensure that due care is exercised in order to avoid content that may disturb or be harmful to children that has offensive language, explicit sexual or violent material, music with sexually explicit lyrics or lyrics which depict violence.

- ii. Section 32 imposes a specific mandatory obligation on broadcasters to exercise responsible judgment when scheduling advertisements that may be unsuitable for children during periods when children are expected to be watching or listening to programmes.
- iii. The Regulations (Section 33) go further to mandate any broadcaster to schedule all programming for the watershed period, including advertisements, to conform to the rights of children. The regulations have defined the 'watershed period' to mean the time between 5.00 am and 10.00 pm, or such other time as may be prescribed by the Authority by Notice in the Kenya Gazette, within which content intended for an adult audience is not to be aired.

3. The Programming Code for Broadcasting Services in Kenya (3rd Edition 2019)

The Code has been defined as a code of practice for both radio and television broadcasters, setting the standards for the time and manner of programmes to be broadcast by a licensee prescribed by or approved by the Authority. The Code hence is as a result of the mandate of the Communications Authority as contained in Section 46A to set standards for the broadcasting services.

- i. The Code under Section 2 imposes an obligation for broadcasters to serve public interest at all times. This public interest includes the protection of minors, children, and viewers from indecent programming or potentially harmful content.
- ii. Section 3 further reiterates the protection provided for to children by explaining the scope of the watershed period is to ensure that unsuitable material for children and minors is not broadcast at times when there is likely to be a large audience of young listeners or viewers.
- iii. The watershed period guidelines apply to all programme and non-programme matter, namely advertisements, infomercials, programme promotions, programme listings, community service announcements, station identifications, commentaries, interviews and documentaries.
- iv. The Code contains similar definition of watershed that all programmes broadcast between 5.00am and 10.00pm must be suitable for family listening and viewing. Any programmes or movies classified or rated for Adults only shall not be aired during this period. The same is contained in the Code under the guidelines to programming during the watershed period.
- v. Section 4 which details the generally acceptable standards while airing content continues to impose the mandatory obligation on broadcasters to take all reasonable steps to protect children from material that is unsuitable for them.
- vi. The Children Programming Guidelines under the Code specifically prohibit children's programmes from scenes depicting the consumption of liquor or tobacco products unless an educational point is being made or in very exceptional cases if the dramatic context makes it absolutely necessary.

4. The Administrative Guidelines on Alcohol Advertising

In 2010, the Ministry of Information and Communication, Ministry of Trade and Industry, a consortium of licensed Alcoholic Beverages companies among other key stakeholders, developed administrative guidelines to monitor and self-regulate the way brands are marketed in order to promote responsible consumption of alcohol in Kenya. These guidelines remain in force to date, having been developed in consultation with a wide number of stakeholders including Marketing Society of Kenya (MSK), Advertising Practitioners Association (APA), Kenya Association of Manufacturers (KAM), Media Owners Association (MOA) and Public Relations Society of Kenya (PRSK), in addition to the government and licensed alcoholic drinks companies.

The guidelines make reference timings when alcoholic beverages advertisements should be aired to reduce exposure of such advertisements to children.

Conclusion

In view of the above mitigating measures, we submit that there are adequate measures in place, both in law and practice, to mitigate against exposure of minors and other vulnerable persons in the community to unsuitable content on alcoholic consumption. There already exists in law - Kenya Information & Communication Act 2015, Kenya Information and Communication (Broadcasting) Regulations 2016, The Programming Code for Broadcasting Services in Kenya and the Administrative Guidelines on Alcohol Advertising - measures to prescribe hours within which electronic advertisement of alcoholic drinks shall be done. This mandate has been bestowed on the Communication Authority of Kenya (CA) - the regulator of broadcasters.

The amendment therefore seeks to duplicate a role and a mandate that already exists and currently adequately being undertaken by CA. The bill will increase the statutory compliance complexes without any added benefit to those persons it is seeking to protect. In addition, implementing the provisions as proposed without the relevant authorities first conducting a regulatory impact assessment will result in debilitating effects to the economy and employment in the creative industry in Kenya (media, designers, programmers, actors, producers, film, photographers etc).

It's important to note that exposure to young people to unsuitable content on alcoholic consumption is largely on the internet or digital which is largely unregulated and does not come under the purview of watershed hours.

Our Recommendation

Delete Sections 2 (b) and 3 of the Alcoholic Drinks Control (Amendment) Bill, 2019.

SPECIAL ISSUE

Kenya Gazette Supplement No. 168 (National Assembly Bills No. 70)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2019

NAIROBI, 4th October, 2019

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**THE ALCOHOLIC DRINKS CONTROL
(AMENDMENT) BILL, 2019**

A Bill for

AN ACT of Parliament to amend the Alcoholic Drinks Control Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Alcoholic Drinks Control (Amendment) Act, 2019. Short title.

2. Section 45 of the Alcoholic Drinks Control Act, 2016 is amended— Amendment of section 45 of No.4 of 2010.

(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (d)—

(da) the consumption of that drink promotes national values;

(b) by inserting the following new subsection immediately after subsection (1) —

(1A). The Cabinet Secretary shall prescribe the hours within which electronic advertisement of alcoholic drinks shall be done.

3. Section 68 of the Alcoholic Drinks Control Act, 2016 is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (d)— Amendment of section 68 of No.4 of 2010.

(da) prescribe the hours within which electronic advertisement of alcoholic drinks shall be done;

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Alcoholic Drinks Control Act, No. 4 of 2010 to empower the Cabinet Secretary to prescribe the hours within which electronic advertisement of alcoholic drinks shall be done. This is in order to reduce the exposure to children and other vulnerable persons in the community such as recovering alcoholics of unsuitable content on alcohol consumption.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill delegates legislative powers to the Cabinet Secretary and does not contain provisions limiting fundamental rights and freedoms.

Statement on whether the Bill concerns county governments

This is not a Bill concerning county governments in terms of Article 110 (1) (a) of the Constitution as it does not affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

Statement on the financial implications of the Bill

The enactment of this Bill shall not occasion additional expenditure of public funds to be provided for in the estimates.

SILVANUS OSORO ONYIEGO,
Member of Parliament.

Section 45 of No. 4 of 2010 which it is proposed to amend-

45. Promotion by advertisement

(1) Subject to this Part, no person shall promote an alcoholic drink so as to create a false impression that—

- (a) a link exists between consumption of that drink and social or sexual success;
- (b) consumption of that drink is acceptable before or while engaging in driving, operating machinery, sports or other activities that require concentration in order to be carried out safely;
- (c) that the alcoholic drink has a therapeutic value or that it has the ability to prevent, treat or cure any human disease;
- (d) it is wrong or foolish to refuse that drink.

(2) A person who contravenes any of the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Section 68 of No. 4 of 2010 which it is proposed to amend-

68. Regulations

(1) The Minister may, on recommendation of the relevant agency, make Regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may—

- (a) prescribe anything required by this Act to be prescribed or prohibit anything required by this Act to be prohibited;
- (b) prescribe the recommended levels of alcohol in alcoholic drinks which levels shall not exceed the levels set by the World Health Organisation;
- (c) prescribe substances as harmful constituents of an alcoholic drink;
- (d) prescribe the hours within which the sale of alcoholic drinks shall be permitted;
- (e) prohibit the addition or use of any harmful constituent or ingredient in the production of alcoholic drinks;
- (f) prescribe the methods to be used in testing alcoholic drinks;

- (g) prescribe the information that manufacturers shall provide to the relevant agency including information on alcoholic drinks, sales and advertising data, and information on product composition, ingredients, hazardous properties and brand elements;
- (h) subject to this Act, control the labelling, packaging, sale or distribution of alcoholic drinks, so as to—
 - (i) ensure that the purchaser or consumer of an alcoholic drink is not misled as to its quality, quantity, character, value, composition, effect, merit or safety;
 - (ii) prevent injury or harm to the health of the consumer;
- (i) prescribe the forms of applications, notices, licences and other documents for use under this Act;
- (j) prescribe the fees payable under this Act.



THE REPUBLIC OF KENYA

LAWS OF KENYA

KENYA INFORMATION AND COMMUNICATIONS ACT

CHAPTER 411A

Revised Edition 2015 [2012]

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www.kenyalaw.org

- (b) subject to any limitations which the Cabinet Secretary, in consultation with the Authority may, by regulations, determine, to all radio communication stations and radio communication apparatus which is released from within Kenya or its territorial waters, or from any vessel or aircraft which is registered in Kenya.

(2) Without prejudice to the liability of any other person, in the event of the contravention of the provisions of subsection (1) or of any regulations or orders made thereunder, occurring in relation to any radio communication station or radio communication apparatus on board or released from any vessel or aircraft, the captain or the person, for the time being, in charge of the vessel or aircraft commits an offence under this Act:

Provided that this subsection shall not apply if the contravention consists of the use by a passenger, on board the vessel or aircraft, of any radio communication apparatus not designed or adapted, for transmission (as opposed to reception) which is not part of the radio communication apparatus of the vessel or aircraft.

(3) The Cabinet Secretary, in consultation with the Authority may make regulations for the use of radio communication apparatus on board a vessel or aircraft not registered in Kenya while the vessel or aircraft is within the territorial limits of Kenya or its territorial waters.

[L.N. 39/1999, Act No. 25 of 2015, Sch.]

PART IVA – BROADCASTING SERVICES

46A. Functions of the Commission in relation to broadcasting services

The functions of the Commission in relation to broadcasting services shall be to—

- (a) promote and facilitate the development, in keeping with the public interest, of a diverse range of broadcasting services in Kenya;
- (b) facilitate and encourage the development of Kenyan programmes;
- (c) promote the observance at all times, of public interest obligations in all broadcasting categories;
- (d) promote diversity and plurality of views for a competitive marketplace of ideas;
- (e) ensure the provision by broadcasters of appropriate internal mechanisms for disposing of complaints in relation to broadcasting services;
- (f) protect the right to privacy of all persons; and
- (g) carry out such other functions as are necessary or expedient for the discharge of all or any of the functions conferred upon it under this Act.
- (i) administering the broadcasting content aspect of this Act;
- (j) developing media standards; and
- (k) regulating and monitoring compliance with those standards.

[Act No. 1 of 2009, s. 16, Act No. 41A of 2013, s. 14.]

46B. Classification of broadcasting services

(1) Broadcasting services shall be classified for specified areas according to the following service categories—

- (a) public broadcasting;
- (b) private broadcasting;
- (c) community broadcasting.

(2) Subject to the provisions of this Act, broadcasting service licences shall be categorized into the following classes—

- (a) free-to-air radio;
- (b) free-to-air television;
- (c) subscription radio;
- (d) subscription television;
- (e) subscription management;
- (f) any other class of licence as may be determined in accordance with the Regulations.

[Act No. 1 of 2009, s. 16.]

46C. Requirement of a broadcasting licence

(1) Subject to this Act, no person shall provide broadcasting services except in accordance with a licence issued under this Part.

(2) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.

(3) A licence granted under this section may include conditions requiring the licensee to—

- (a) broadcast in such areas and within such geographical limits as the Commission may prescribe;
- (b) commit a minimum amount of time as may be prescribed, in its programme schedule to locally produced programmes, or, in the alternative, pay such amount of money as may be prescribed, into a Fund to assist the development of the Kenyan production industry;
- (c) pay such fees as the Commission may prescribe; and
- (d) fulfill such other conditions as the Commission may require.

[Act No. 1 of 2009, s. 16.]

46D. Eligibility for licensing and considerations for grant of licence

(1) A person shall not be eligible for the grant of a broadcasting licence if such person—

- (a) is a political party;
- (b) is adjudged bankrupt or has entered into a composition or scheme of arrangement with his creditors;
- (c) is of unsound mind;
- (d) a public officer or a state officer;
- (e) does not fulfill such other conditions as may be prescribed.

(2) In considering applications for the grant of a broadcasting licence, the Commission shall have regard to—

- (a) observance at all times of public interest obligations in all broadcasting categories;
- (b) diversity and plurality of views for a competitive marketplace of ideas;
- (c) availability of radio frequency spectrum including the availability of such spectrum for future use;
- (d) efficiency and economy in the provision of broadcasting services;
- (e) demand for the proposed broadcasting service within the proposed broadcast area;
- (f) expected technical quality of the proposed service, having regard to developments in broadcasting technology;
- (g) suitability, capability, experience and expertise of the applicant in as far as carrying out such broadcast service is concerned;
- (h) financial means and business record, if any, of the applicant; and
- (i) any other relevant matter that the Commission may consider necessary.

[Act No. 1 of 2009, s. 16, Act No. 41A of 2013, s. 15.]

46E. Public broadcasting services

The Kenya Broadcasting Corporation established under section 3 of the Kenya Broadcasting Corporation Act (Cap. 221) is hereby designated as the public broadcaster and shall provide public broadcasting services.

[Act No. 1 of 2009, s. 16.]

46F. Community broadcasting services

(1) The Commission may, upon application in the prescribed manner and subject to such conditions as the Commission may deem necessary, grant a licence authorizing the provision of community broadcasting services.

(2) The Commission in considering applications for grant of a licence under this section shall have regard—

- (a) to the community of interests of the persons applying for or on whose behalf the application is made;
- (b) as to whether the persons, or a significant proportion thereof constituting the community have consented to the application;
- (c) to the source of funding for the broadcasting service;
- (d) as to whether the broadcasting service to be established is not-for-profit; and
- (e) to the manner in which members of the community will participate in the selection and provision of programmes to be broadcast.

(3) A licence granted under this section may contain conditions requiring the licensee to—

- (a) ensure that a cross section of the community is represented in the management of the broadcasting service;
- (b) ensure that each member of the community has a reasonable chance to serve in the management of the broadcasting service;
- (c) ensure that members of the community have a way of making their preferences known in the selection and provision of programmes;
- (d) conform to any conditions or guidelines as the Commission may require or issue with regard to such broadcasting service.

[Act No. 1 of 2009, s. 16.]

46G. Private broadcasting services

(1) Subject to this Act, the Commission may grant a licence to any person to provide private broadcasting services.

(2) A licence granted under this section may include conditions requiring the private broadcaster to—

- (a) provide coverage in such areas as may be specified by the Commission;
- (b) in the case of television, include drama, documentaries and children's programmes that reflect Kenyan themes.

[Act No. 1 of 2009, s. 16.]

46H. Commission to prescribe programme code

(1) The Commission shall have the power to set standards for the time and manner of programmes to be broadcast by licensees under this Act.

(2) Without prejudice to the generality of subsection (1), the Commission shall—

- (a) prescribe a programming code;
- (b) review the programming code at least once every two years;
- (c) prescribe a watershed period programming when large numbers of children are likely to be watching or listening to programmes; and
- (d) ensure compliance with the programming code prescribed under this section:

Provided that the programming code referred to herein shall not apply where a licensee is a member of a body which has proved to the satisfaction of the Commission that its members subscribe and adhere to a programming code enforced by that body by means of its own mechanisms and provided further that such programming code and mechanisms have been filed with and accepted by the Commission.

[Act No. 1 of 2009, s. 16, Act No. 41A of 2013, s. 16.]

46I. Responsibilities of broadcasters

(1) All licensed broadcasters shall—

- (a) provide responsible and responsive programming that caters for the varied needs and susceptibilities of different sections of the Kenyan community;

- (b) ensure that Kenyan identity is developed and maintained in programmes;
 - (c) observe standards of good taste and decency;
 - (d) gather and present news and information accurately and impartially;
 - (e) when controversial or contentious issues of public interest are discussed, make reasonable efforts to present alternative points of view, either in the same programme or in other programmes within the period of current interest;
 - (f) respect the right to privacy of individuals;
 - (g) respect copyright and neighbouring rights in respect of any work or material;
 - (h) keep a program log or machine readable record of its programming for a period of one year after the date of broadcasting;
 - (i) ensure that advertisements, either in terms of content, tone or treatment, are not deceptive or are not repugnant to good taste;
 - (j) ensure that derogatory remarks based on ethnicity, race, creed, colour and sex are not broadcast.
- (2) Where—
- (a) any cinematograph film has been submitted under any law for classification or censorship and approved for exhibition; and
 - (b) where approval of the film for exhibition has been denied or has been given subject to excisions, no broadcaster shall—
 - (i) in the case of any film in respect of which such approval has been denied, broadcast the film or any part thereof; or
 - (ii) in the case of any film that has been approved for exhibition subject to excisions therefrom, broadcast that film or any part thereof if the film or, as the case may be, that part thereof includes any part of the film required to be excised;

except with the consent of and subject to any conditions given by the Kenya Film Censorship Board established under the Films and Stage Plays Act (Cap. 222).

(3) A broadcaster licensed to distribute radio or television programme shall broadcast on radio or television such percentage of Kenyan programmes as shall be prescribed by the Authority.

[Act No. 1 of 2009, s. 16, Act No. 41A of 2013, s. 17.]

46J. Revocation of licences

The Commission may in accordance with this Act revoke a licence to broadcast where the licensee—

- (a) is in breach of the provisions of the Act or regulations made thereunder;
- (b) is in breach of the conditions of a broadcasting licence; or
- (c) fails to utilize the assigned broadcasting frequencies within such period as the Authority shall stipulate in the licence.

[Act No. 1 of 2009, s. 16, Act No. 41A of 2013, s. 18.]

IN EXERCISE of the powers conferred by section 46K of the Kenya Information and Communications Act, 1998, as amended, the Cabinet Secretary for Information, Communications and Technology, in consultation with the Communications Authority of Kenya, makes the following Regulations: —

**THE KENYA INFORMATION AND COMMUNICATIONS
(BROADCASTING) REGULATIONS, 2016**

Citation

These Regulations shall be cited as the Kenya Information and Communications (Broadcasting) Regulations, 2016

PART I—PRELIMINARY

Interpretation

In these Regulations, unless the context otherwise requires—

“Act” means the Kenya Information and Communications Act, 1998

“Advertise” means to broadcast any item with the intention of—

(a) selling to a viewer or listener, any product or service;

(b) convincing a viewer or listener of a belief or course of action; or

(c) promoting a product, service, belief, course of action, person or organization;

“Authority” means Communications Authority of Kenya established under section 3 of the Act.

“Broadcasting licence” means a licence issued by the Authority permitting the licensee to provide broadcasting services;

“Broadcast market” means the area, specified in the broadcasting licence by the Authority, within which a licensee is licensed to operate;

“Child” means an individual who has not attained the age of eighteen years;

“Current affairs programming” means programming that is not a news bulletin but which focuses on and includes comment on and interpretation and analysis of issues of immediate social, political or economic relevance and matters of international, national, regional and local significance

PART IV – CONTENT

17. Minimum standards

Content prescribed in this part shall form the basis upon which the Authority or a recognized body of broadcasters shall prepare their respective programme codes.

18. General requirements.

(1) A licensee shall ensure that no broadcasts by its station: -

- (a) contains the use of offensive language, including profanity and blasphemy;
- (b) presents sexual matters in an explicit and offensive manner;
- (c) glorifies violence or depicts violence in an offensive manner;
- (d) is likely to incite, perpetuate hatred, vilify any person or section of the community, on account of the race, ethnicity, nationality, gender, sexual preference, age, disability, religion or culture of that person or section of the community; or
- (e) has no program rating from the Classification Board indicated prior to the commencement of such programs.

19. Protection of children.

A licensee shall—

- (a) ensure that due care is exercised in order to avoid content that may disturb or be harmful to children, that has offensive language, explicit sexual or violent material, music with sexually explicit lyrics or lyrics which depict violence;
- (b) not broadcast programmes with the content specified in paragraph (a) during the watershed period;
- (c) request for permission to conduct an interview with a child from the child's parent or guardian before conducting an interview with a child; and
- (d) ensure the identity of a child in distress is not unnecessarily disclosed

20. News reporting.

(3) A licensee shall ensure that all infomercials that are broadcast by its station are lawful, honest and decent and conform to the principles of fair competition.

(4) The provisions of paragraphs (1) and (2) shall not apply to stations which exclusively broadcast infomercials.

31. Payment of criminals.

A licensee shall not knowingly pay any person involved in a crime or any person who has been convicted of a criminal offence, in order to obtain information.

32. Advertisements.

(1) A licensee shall ensure that it only broadcast advertisements that are lawful, honest and decent and conform to the principles of fair competition.

(2) A licensee shall ensure that advertisements broadcast on its station do not—

(a) contain any descriptions, claims or other material which may, directly or by implication, mislead members of the public in relation to the product or service advertised, or about its suitability for the purpose recommended; and

(b) unfairly attack or discredit, directly or by implication, any other advertisers, products or advertisements.

(3) A licensee shall, before broadcasting an advertisement, ensure that any descriptions or claims in the advertisement have been adequately substantiated by the advertiser.

(4) A licensee shall not unreasonably discriminate against or favour any advertiser.

(5) A licensee shall exercise responsible judgment when scheduling advertisements that may be unsuitable for children during periods when children are expected to be watching or listening to programmes.

(6) A licensee shall ensure that—

(1) (a) any advertising breaks are clearly distinguishable from broadcast programmes; and

(b) its presenters, when reading advertisements, make a clear distinction between the programming material and the advertisements they deliver.

(7) The Authority shall;

- (a) Prescribe within the Programme Code guidelines on advertising setting the minimum standard of advertisements to be aired by broadcasters.
- (b) Establish and enforce the advertising guidelines.

33. Watershed period.

(1) A licensee shall ensure that—

(a) content which depicts or contains scenes that are rated by the Classification Board as adult, or are of the language intended for adult audiences are not aired during the watershed period;

(b) All programming scheduled for the watershed period, including advertisements, shall conform to the rights of children;

(c) all programmes broadcast during the watershed period are suitable for family audiences and the transition from family oriented to a more adult programming after the watershed period is gradual;

d) consumer advice such as warnings, labeling, classification details and other announcements are given prior to the telecast of a programme or its trailers.

e) All trailers and promotional material shown before the watershed time comply with paragraph (b) and (c).

(2) All licensees shall exercise responsibility in scheduling of programmes to reduce the risk of causing offence.

34. Local content.

(1) The Authority may require a licensee to commit the minimum amount of time, as maybe specified in the licence; to broadcast of local content or as may be prescribed from time to time by the Authority by notice in the Gazette:

Provided that where a broadcaster is, unable to comply with the foregoing, the Authority shall require such broadcaster to pay such an amount of money, as may be prescribed by the Authority into the Fund.

(2) The Authority shall from time to time prescribe a minimum local content quota



THE PROGRAMMING CODE FOR BROADCASTING SERVICES IN KENYA

3rd EDITION-September 2019

**A Publication of the
COMMUNICATIONS AUTHORITY OF KENYA**

- 2.4.2 Respect professional and generally accepted values, ethical and moral standards while creating and editing programmes;
- 2.4.3 Responsible for the broadcast materials relayed on their stations, regardless of their source, as well as professional activities of its employees;
- 2.4.4 Schedule programme materials that adhere to generally accepted standards of decency.
These standards include but are not limited to respect of ethnic, cultural, economic and religious diversities;
- 2.4.5 Ensure special attention in programmes is dedicated to treatment of vulnerable persons who appear in these programmes;
- 2.4.6 Publish and make their editorial policies publicly available.

SECTION 3: WATERSHED PERIOD

Relevant legislation to this section includes Section 46I (2) (a) (b) of the *Kenya Information and Communications Act, 1998*, and Sections 20 (b), and 34 (1) (2) of the *Kenya Information and Communications (Broadcasting) Regulations, 2009*.

3.1 Scope

- 3.1.1 This Programming Code seeks to ensure that unsuitable material for children and minors is not broadcast at times when there is likely to be a large audience of young listeners or viewers.
- 3.1.2 The Code further seeks to ensure programmes broadcast during the watershed period are suitable for family audiences and the transition from family-oriented to a more adult programming after the watershed period is gradual.
- 3.1.3 Attention will be given to include and respect diversity such as may be expressed through differences due to, but are not limited to, cognitive or physical ability, culture, ethnicity, religion, socio-economic status, gender, age, national origin, political persuasion, marital status, educational background or geographic location.
- 3.1.4 The watershed period guidelines apply to all programme and non-programme matter, namely advertisements, infomercials, programme promotions, programme listings,

3.4.1 Scope

Classification guidelines as prescribed apply to all programme and non-programme matter, namely commercials, infomercials, documentaries, programme promotions, programme listings, community service announcements and station identifications.

3.4.2 Guidelines for programme classification or rating

3.4.2.1 The two key principle guidelines for programme classification or rating are:

- (a) To protect children and vulnerable adults from potentially harmful or otherwise unsuitable content.
- (b) To empower consumers, particularly parents and those with responsibility for children, to make informed viewing decisions.

3.4.2.2 Broadcast material must be classified prior to being aired.

3.4.2.3 Broadcasters are encouraged to include in all parental guided programmes warnings in other publicity materials like the TV page in newspapers and TV guides.

3.4.2.4 All trailers and promotional material shown before the watershed period must comply with the programming during the watershed.

3.4.3 FTA broadcasting rating system

3.4.3.1 Representations of sexually explicit content must not occur before the watershed period (in the case of television), when children are particularly likely to be listening (in the case of radio), or when content is likely to be accessed by children.

3.4.3.2 Programmes rated Adult only should not be aired during the watershed period.

3.4.4 Subscription and 'Pay per view' broadcasting rating system

Subscription and 'Pay per view' broadcasting services providers shall:

3.4.4.1 Provide mandatory restricted access such as a PIN protected system (or other equivalent protection) that restricts access solely to those authorized to view and protect children from accessing content rated for Adults only;

3.4.4.2 Ensure that the mechanisms that have been put in place to protect children are clearly explained to subscribers.

