Chapter VIII

Excise Policy 2021-22

Chapter VIII: Excise Policy 2021-22

Delhi Excise Policy 2021-22 was implemented to simplify liquor trade, bring transparency, check monopoly, generate optimum revenue as well as ensure better consumer experience. However, the changes effected to roll out the policy were fraught with shortcomings and the actual implementation was sub optimal. The objectives stated for change in policy were not achieved. Necessary permissions from the Cabinet were not obtained for giving exemptions/relaxations for depositing license fee or for not taking coercive action against defaulters or deciding pricing. The new policy had inherent design issues including the imposed exclusivity arrangement between manufacturers and wholesalers and formation of retail zone with a minimum of 27 wards in each zone, limiting the number of total licensees and increasing the risk of monopolisation and cartel formation.

Several fundamental changes were effected in the Excise policy 2021-22 relating to levy and collection of Excise duty, administration of liquor supply chain and coverage of retail operations. Instead of collecting excise duty on sale of per unit of bottles, in the Excise Policy 2021-22, presumptive excise duty based on the sales figure of 2019-20 and a 10 per cent growth factor was subsumed in zonal license fee. Once Zonal license fee was paid off, there was incentive for retailers to increase the volume of sale (via economy of scale as well as deep discounting) without proportionate revenue gain to the Government. Subsequent implementation issues led to a loss of revenue of approximately ₹ 2,002.68 crore.

There was lack of scrutiny by the Excise Department, with regard to financial capacity, management expertise and ability to survive as a going concern, of the zonal licensees. Instances of relationship between business entities across liquor supply chain were also observed, despite earlier complaints at the Tender evaluation stage, which were not properly investigated. The skewed supply pattern as evidenced by supply chain data showed risk of exclusivity arrangements between licensees and Brand Pushing. Other important measures which were planned in the policy like setting up of liquor testing laboratories, batch testing for rigorous quality assurance, and enhanced monitoring and regulation through creation of a dedicated post were not implemented.

8.1 Introduction

Delhi Excise Policy 2021-22 mentioned the need for a revamped excise policy reasoning that "The current system of excise regime in Delhi is highly cumbersome and the liquor trade is conducted in an archaic manner. The Excise revenue presently generated in Delhi is at sub-optimal level and there is significant potential for revenue augmentation and also providing a decent standard of customer experience".

The Excise Policy 2021-22 with detailed terms and conditions for different type of licenses was implemented from 17 November 2021 and was extended[40] up to 31 August 2022.

The replies to the audit observations were not provided by the Government.

8.1.1 Objectives of the Excise Policy 2021-22

The Excise Policy was framed with the following objectives:

(i) To ensure generation of optimum revenue for the Government, eradicate sale of spurious liquor/non-duty paid liquor in Delhi and transform consumer experience.

(ii) To simplify the highly complex, heavily regulated excise regime ensuring ease of doing business in the overall trade.

(iii) To not allow formation of any monopoly or cartel.

(iv) To allow responsible players in the industry to carry out the trade transparently without resorting to any proxy model.

(v) To ensure equitable access of liquor supply to all the Wards/area of Delhi so that there are no un-served and under-served localities eliminating the problem of spurious/non-duty paid liquor.

(vi) To put in place a simplified duty and pricing mechanism that is periodically reviewed.

(vii) To ensure accountability on part of the licensee in terms of revenue enhancement besides keeping in check emergence of monopolies and cartels.

(viii) Promotion of consumer choice by ensuring availability of popular as well as niche brands so that the customer has a wider choice.

(ix) Systematic measures to check smuggling and bootlegging, such as adequate spread of retail vends and insignificant or no price differential with the neighbouring States thereby eliminating the arbitrage for smuggling.

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[40] 1st Extension- granted for two months, upto 30.05.2022, via circular dated 03.03.2022, of the Excise Department, GNCTD

2nd Extension granted for two months, upto 30.07.2022, via circular dated 24.05.2022, of the Excise Department, GNCTD

3rd Extension granted for one month, upto 31.08.2022, via circular dated 01.08.2022, of the Excise Department, GNCTD

8.1.2 Features of the Excise Policy 2021-22

(i) Role of Delhi Government Corporations was entirely removed from liquor retail business.

(ii) Instead of collecting excise duty on the basis of quantity sold, Excise Duty was subsumed under the reserve price for bidding by zonal license applicants. The reserve price was based on the sales figures of 2019-20 with a 10 *per cent* growth factor.

(iii) Delhi was divided into 32 zones (with equal number of vends in each Zone) for retail sale of liquor and each zone was to be allotted based on tendering. One entity could be awarded a maximum of two zones.

(iv) Wholesale supply of liquor was reserved exclusively for private liquor distributors (other than manufacturers).

(v) Any manufacturer that wishes to sell its product in Delhi will have to choose one of the Licensed L1 distributor holding wholesale license for supply of Indian and Foreign liquor and also holding bonded warehouse licenses in the form of L31 as an exclusive distributor for all its brands.

(vi) Opening of equitably distributed liquor vends, with at least two retail vends in each ward was to be ensured.

Chart 8.1: License Types for Liquor Distribution

Description	License Name	Mode of Selection
Wholesale distributor as an exclusive agent of manufacturer, for selling IMFL and FL.	L-1	Application basis
Warehouse License granted to the same entity for opening associated Bonded Warehouse	L-31	
Zonal Licensee operating private retail vends	L-7Z	Bidding
Retailer (Private Retail vends opened by the respective Zonal Licensee)	L-7V	
Retail of liquor for consumption on the premises	L15 (Hotels), L28 (Clubs), L16, L17 (Restaurant)	Application basis

(vii) Nominal Excise Duty and Value Added Tax (VAT), at one *per cent* each, was collected at the time of actual supply of liquor.

(viii) Pricing mechanism was modified in the light of the change in modality of Excise duty collection as above, with ample scope for discounts on liquor after fixation of Maximum Retail Price (MRP).

8.2 Chronology of events in the Excise Policy 2021-22

The **Chart 8.2** below represents the chronology of events leading to the policy formulation.

Chart 8.2: Chronology of events

04.09.2020	13.10.2020	31.12.2020	05.02.2021	05.02.2021
The Expert Committee was constituted by the order of Govt. of NCT of Delhi	The Expert Committee submitted its report to the Govt.	The Report placed in public domain for comments from public and stakeholders	The Report and the comments from public and stakeholders placed before the Council of Ministers	The Council of Ministers constituted a Group of Ministers (GoM) for State Excise Reforms vide Cabinet Decision No. 2942
22.03.2021	**22.03.2021**	**05.04.2021**	**15.04.2021**	**21.05.2021**
The Council of Ministers accepted the report on Delhi Excise Reforms prepared by the GoM	The Excise Department was directed to implement the report of GoM and prepare Excise Policy 2021-22	The GoM recommended and approved additional clarifications/modifications in the Report which were approved by the Cabinet on 15.04.2021.	The Cabinet had authorized the Finance Minister/Dy. CM to make minor changes within the overall framework of report of the GoM on New Excise Policy, as already approved by the Council of Ministers.	On the advice of Lt. Governor of GNCT of Delhi, the Cabinet vide Cabinet decision no. 3003 had withdrawn the power given to Dy. CM/Finance Minister and made it compulsory to take approval of Council of Ministers in case any amendment is required in the approvals accorded by the Cabinet.

The issues observed in the preparation of the Excise Policy are highlighted below:

8.2.1 Decisions taken without the approval of competent authority

Audit observed that in violation of Cabinet decision no. 3003, certain decisions, mentioned below, which had revenue implications were taken without taking approval from the Cabinet and/or obtaining the opinion of Lieutenant Governor.

(i) Relaxation regarding coercive action against the Licensee in case of any default of payment of license fee within the prescribed/stipulated time

(ii) Waiver/reduction in license fee

(iii) Opening of liquor vends in conforming area in lieu of mandatory liquor vends to be opened in non-conforming wards

(iv) Extension of Excise Policy 2021-22

(v) Refund of Earnest Money Deposit (EMD) in case of Airport Zone

(vi) Correction in formulae for calculating MRP in case of Foreign Liquor.

Details are given in **Annexure XV**.

(b) Further, Excise Rules amended to enable the implementation of Excise Policy 2021-22 had to be laid before Legislative assembly for approval, in accordance with Section 81(4) of Delhi Excise Act, 2009. However, as per the reply received from the Excise Department, the amended rules were not laid before the assembly for approval/ ratification.

8.2.2 Variations between the report of Expert Committee and recommendations of GoM

In order to reform liquor trade in Delhi, an Expert Committee was constituted under the chairmanship of Excise Commissioner with the other members being Deputy Commissioner (Excise) and Additional Commissioner (Trade and Taxes). The mandate of this committee was to suggest measures for:

(i) Augmenting the State Excise Duty Revenue

(ii) Simplifying the liquor pricing mechanism

(iii) Checking malpractices and evasion of duty in liquor trade

(iv) Ensure equitable access to liquor supply

Subsequently, after the submission of Expert Committee report, the Council of Ministers decided to constitute a Group of Ministers (GoM) under the chairmanship of Dy. CM/ Minister (Finance) with other members being, Minister (Urban development) and Minister (Revenue/ Transport). The GoM was mandated to examine all aspects of the current system, report of Expert Committee and stakeholder comments etc.

Substantial variation between the recommendations of Expert Committee and GoM altered the very basis of need for change in Excise Policy. Major differences are given in **Table 8.1** and a few of them are discussed below the Table.

Table 8.1: Comparison between recommendations of Expert Committee and GoM

Sl. No.	Expert Committee Report	GoM Report
1	Fully Government owned State Beverage Corporation for Liquor Wholesale operations.	Wholesale operations to be handled by private entities with prior distribution experience in the liquor trade and minimum turnover of ₹ 250 crore.
2	The Excise Duty on liquor was to be charged on per bottle basis with significant changes in liquor pricing mechanism.	MRP of liquor was to be fixed by Excise Department on the basis of minimum EDP but the Excise Duty and VAT was primarily to be charged, in advance, in the form of License Fee discovered after bidding for retail zones.
3	Government presence in the retail sector could be minimized.	All retail vends should be allotted to private players only.
4	Lottery system for allotting (at Reserve fee) retail licenses, every two years to ensure regular churning of licensees.	Retail zones to be allotted through one-time bidding (above Reserve Fee) and annually renewed thereafter.
5	Only Individuals could apply for the retail vend license, so as to minimize proxy ownership.	Any private legal entity or individual who had proof of filing income tax return for the last three assessment years was eligible to participate in the bid for retail zones.
6	An individual may be allotted a maximum of two vends.	One applicant could get a maximum of two zones which could contain 54 retail vends.
7	Three vends in each ward and one Government corporation vend in each of the 70 assembly constituencies.	Delhi was divided into 32 Zones[41] having nine wards each and each ward was supposed to have three vends. (Total of 849 vends).

No files were provided to Audit wherein the basis of formulation of GoM Report was outlined. In the absence of these records, Audit could not draw assurance regarding the justification of changes introduced in this report.

The major deviations in the GoM report from the Expert Committee Report has been highlighted below.

8.2.2.1 Issue of Wholesale (L1) licenses to private players only

The Expert Committee recommended Government takeover of wholesale trade of liquor, through separate State Beverage/Wholesale Corporation, owing to past instances of dual ownership (Wholesale and retail) through related private entities and probable complicity of wholesaler in facilitating illegal liquor supply through duplicate barcodes. Even the GoM, in its report, accepted the fact that many wholesalers were able to acquire retail licenses through proxy ownership and make it possible to indulge in sale of non-duty paid liquor. Still the GoM recommended issue of L-1 licenses to private players only. The reason provided in the GoM Report for not forming such Government owned

[41] 32 zones -

- 30 zones - consisting MCD area having 272 wards out of these 28 zones have 9 wards each and 2 zones have 10 wards each. However, each zone has exactly 27 vends.
- One zone –consisting NDMC and Cantonment Area having total 29 vends.
- One zone – Delhi Airport having 10 vends.

Wholesale Corporation was that a deep study and implementation of the same would require time and till such time L-1 license should be granted to private players.

Notably, the idea of forming Government owned wholesale corporation was not new in Delhi, and even in the Cabinet Decision No. 1622 (dated 15 February 2010), it was indicated that a decision needs to be taken on takeover of wholesale trade of liquor. Further it was noted from the finally approved Excise Policy for the year 2022-23 that the wholesale operation was proposed to be managed by private players, which belied the claims made by Government that private wholesale operations was only an interim measure.

8.2.2.2 Excise Duty delinked to the actual sale of liquor

The Expert Committee had suggested retention of collection of Excise Duty on per bottle basis, while altering the pricing mechanism. However, the GoM favoured advance collection of excise duty, in the form of License fee, which was practically delinked to the actual sale of liquor.

8.2.2.3 Retail licenses to limited entities

The Expert Committee, in its report, categorically mentioned that most of the retail licenses were concentrated with a few players through proxy ownership. Retail licenses should be given to an individual and maximum of two retail vends should be allotted to one person to prevent cartelisation. The GoM also mentioned in its report that the entire retail market was apparently controlled by very few people through fraudulent proxy model. However, **it still recommended distribution of retail licenses in zones where one entity/person could get upto 54 vends (two zones).** Notably, the Expert Committee had mentioned the drawbacks of granting retail licenses to limited entities as it was highly prone to cartelization and market capture by the limited number of licensees. In the worst case, if retailers and wholesalers were related entities, syndicates could be formed leading to brand pushing by entering into exclusivity arrangements. Moreover, in case of failure/default of the licensee, there would be no easy substitutes to ensure revenue and maintaining the supply chain.

Thus, these deviations increased the risk of concentration of ownership among few private entities and resultant market distortion.

8.2.3 Comparison of Old Excise Policy and New Excise Policy

A comparison between old Excise Policy and the New Policy is given in **Table 8.2**.

Table 8.2: Comparison between old Excise Policy and the New Policy

Sl. No.		Old Excise Policy (prior to 2021-22 policy)	New Excise Policy (2021-22)
	Wholesale License		
1	Wholesale License	Separate wholesale licenses were granted for IMFL and FL. L-1/L31 (IMFL) to Manufacturing unit.	L1/L31 (Wholesale License for both IMFL and FL) were granted to private entities who were **distributors (not manufacturer).**
2	Profit Margin and EDP	Profit Margin of **five *per cent* of Landed price, in case of IMFL,** to the manufacturer (who was also wholesale licensee).	Profit Margin of **12 *per cent* of Landed Price** of IMFL to Distributor (who was not manufacturer) only.
3	Labs in Warehouse	The policy did not contain any such condition.	Each licensee had to set-up Government approved laboratories at their bonded warehouses.
4	DC (Warehouse)	The policy did not contain any such condition.	A new post of DC (Wholesale Operations) had to be created.
	Retail License		
5	Retail vend conditions	1. Each individual was allowed to own only one license. 2. Around 60 *per cent* of Vends in Delhi were operated by four Government Corporations.	1. Delhi was divided into 32 retail zones (L-7Z license). 2. Each zone to have 27 vends. 3. Each Person/Entity was allowed to own maximum of two zones (54 vends). 4. Only private players were allowed to apply for retail licenses.
6	Process of allocation of license.	Licenses granted on the basis of **application**. No new retail licenses were granted after 2016-17.	L7Z allotted to each zone operator through **e-tender and bidding.** Reserve price for License fee was the base for bidding. Reserve price was basically advance collection of Excise Duty assuming the Excise Duty/ VAT/ Additional Excise Duty earned in 2019-20 and a 10 *per cent* year-on-year growth.
7	Revenue Collection	Excise Duty was collected on a per-bottle basis for each unit sold.	Excise Duty was subsumed under the reserve price for bidding by zonal license applicants and collected in advance as a monthly license fee from zonal licenses.
8	Discount	No discount on MRP was allowed.	Discount was allowed.

After withdrawal of the Excise Policy for the year 2021-22 (in August 2022), the Excise Department implemented the same conditions of old policy (existing before Policy year 2021-22) during the Excise Policy for the year 2022-23 with the only change regarding retail vends. Only Government Corporations were allowed to operate retail vends. Before the 2021-22 policy, private vends were also in operation simultaneously with the Government Corporation vends.

8.3 Revenue model in the Excise Policy 2021-22

In the Excise Policy 2021-22, revenue was to accrue primarily through License fee, discovered through bidding on reserve price[42] (₹ 7,039 crore), which subsumed Excise Duty and VAT based on the revenue figures of financial year 2019-20 with a 10 *per cent* increase for growth. The projected annual revenue as per the discovered bid price was ₹ 8,911 crore. This translates to a revenue of ₹ 7,054 crore on account of the upfront license fee for the duration of Policy period i.e. 17th November 2021 to 31st August 2022. Apart from this, actual Excise revenue also comprised of License fee for wholesale licenses, other import passes and permit fees. Moreover, an additional one *per cent* of Wholesale Price was to be charged as Excise Duty and VAT each. The rounding off of the retail price also resulted in additional Excise Duty.

Audit noted that due to a number of issues ranging from weak policy framework to deficient implementation of the policy, as discussed in this Chapter, there was cumulative loss of approximately **₹ 2,002.68 crore** as discussed in **Paragraph 8.5**.

8.4 Design and Award of licenses

The most important aspect of the implementation of the new Policy was the design of a robust framework for the policy to ensure proper implementation, so that the intended objectives could be achieved. However, it was observed that the following issues in the design and award process weakened the framework which resulted in deviation from the intended objectives.

8.4.1 Wholesale Licenses

Following the recommendation of the GoM report, the Excise Policy 2021-22 granted the wholesale license of both IMFL and FL to private entities who were distributors (not manufacturers) in place of creation of a State Warehousing Corporation, as recommended in the report of the Expert Committee. The policy's stated objective was that the wholesale licenses will be granted to high end professional business entities with years of distribution experience

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[42] Reserve Price of a zone consist of

1. Total license fee (as per old policy i.e. ₹ 8 lakh per vend) of all vends in the zone.
2. Total Excise Duty collected from all these vends during 2019-20 excluding country liquor vends.
3. VAT collected during 2019-20 was apportioned pro-rata to the vends in that zone.
4. Total Excise duty collected from HCR during 2019-20 was apportioned pro-rata to the vends in that zone.
5. Excise Duty on the buffer stock that was lying at bonded warehouses on 31.03.2020.
6. Additional 10 *per cent* on the sum of all above components to account for year on year growth.

comparable to that of global industry standards in supply of Indian and Foreign Liquor.

However, following design and process issues were noticed in the way wholesale licenses were granted under the new policy.

8.4.1.1 Process of award of license

Applications were to be invited for the grant of Wholesale licenses to those who fulfilled the eligibility criteria, i.e., having wholesale distribution experience in the liquor trade for at least five years and minimum turnover of ₹ 150 crore every year for preceding three consecutive financial years.

The wholesale licenses were to be awarded on application basis i.e. a public notice was issued whereby applications were invited for grant of wholesale licenses. Any entity/person fulfilling the eligibility criteria could submit application for getting this license. It was for the competent authority to decide on acceptance or rejection of the individual application.

Audit requisition for providing all records related to the entire process was not met. The Department informed that total 18 applications were received for grant of wholesale licenses. It further informed that out of these 18 applications, one application was withdrawn by the applicant, another was rejected due to incorrect application and two other applications were rejected during the process. However, records related to these four applications were not provided to audit. In the absence of these records, audit could not draw an assurance about the veracity of process followed in these cases.

8.4.1.2 Exclusivity arrangement increasing risk of monopoly

The policy framework provided that these wholesalers were to be distributors (not manufacturers), who could tie-up with more than one manufacturer for supply of Liquor. However, manufacturer could supply its brands through one wholesaler only.

Audit observed that this compulsory tie up restricted the manufacturers to supply its brands through one wholesaler only. As a result, Wholesale licenses for supply of IMFL and FL were granted to 14 business entities under the Excise Policy 2021-22, whereas the same were granted to 77 manufacturers of IMFL and 24 suppliers of FL in the old policy (2020-21). This concentration of wholesale supply to few entities increased the risk of monopoly or cartel formation which was against one of the objectives of the new Excise Policy as also mentioned in detail in **Paragraph 8.4.4**.

8.4.1.3 Revenue from Wholesale operations

One of the key objectives of the new policy was to augment the state excise duty revenue. Under the earlier policy, the wholesale license fee was linked with the number of brands and its wholesale value. However, as per the new Excise Policy, the wholesale licensee was to pay an annual license fee of ₹ 5 crore irrespective of the number of brands. So, in the new policy the license fee was delinked with the extent of the operations of the wholesaler licensee. This change should also be viewed in light of the observation made above regarding risk of monopolising the wholesale operation due to exclusivity arrangement.

Further, there was an increase of Wholesaler/ Distributor margin from earlier rate of 5 *per cent* to 12 *per cent* under the new policy. The justification offered by the GoM was that it was necessary to compensate the higher license fee for global distribution standard, quality checking systems which basically meant that every L1 Licensee had to set up a Government approved Laboratory at their Warehouses to randomly check the presence of sub-standard liquor or spurious liquor in each batch of liquor received from the manufacturers. It was also supposed to cover the cost of local transportation.

The justification offered was not supported by quantifying the various counteracting factors and then allowing an appropriate profit margin. The change in distribution standard which was likely to incur higher cost was never explained by GoM. The local transportation charge was not enough to justify the substantial increase in distributor margin. Further, the quality checking labs which were to be set up, with apparently high cost incidence, were not put in place and operationalized (as discussed further in **Paragraph 8.6.5**).

Thus, on one hand the scope of scale of operations and profit margins of the wholesale licensees was enhanced but on the other hand the revenue from license fees was delinked from the same. This should be seen in light of the fact that only three wholesaler accounted for more than 70 *per cent* of the volume of liquor sold as commented in **Paragraph 8.4.4** thereby creating systematic disadvantage for wholesale licensee with smaller operations.

8.4.1.4 Nature of Joint Venture partnerships

The Policy provided that, a Joint Venture between entities was allowed, but at least one of the Joint Venture partner firm should individually have the required experience and turnover. However, the policy did not specify the particulars of such Joint Venture arrangement or the nature of entities and form of partnership between the Joint Venture partners.

From scrutiny of records provided it was noticed that:

- At least two of the Wholesalers entered into a Joint Venture where the entity with requisite liquor distribution experience and turnover had an insignificant stake in the partnership i.e. ranging from one *per cent* to five *per cent*.
- No details relating to the background, financial status and experience of the majority partner/ managing partner, in the applicant partnership firm, were found in the records made available to Audit.

- In one of the above cases, JV partnership agreement explicitly states the "payment of royalty of ₹25,000 to the partner with requisite experience and turnover, in order to make the first party eligible to apply for License". This indicated that the entity, which fulfilled the eligibility criteria, was taken aboard as a matter of formality to make the JV eligible for the license.

Allowing such an arrangement go against the stated objective of high end, professional management of the wholesale operations.

8.4.2 Zonal/Retail Licenses

As per the policy, the objective for the grant of Retail License was to ensure equitable access of liquor supply to all the Wards/areas of Delhi eliminating the possibility for spurious/non-duty paid liquor. Further the objective included ensuring accountability on part of the licensee in terms of revenue enhancement besides keeping in check the emergence of monopolies and cartels.

Allotment was to be made through e-tender with the reserve price as the base license fees. A total of 32 zones were put up for bidding which comprised of 30 zones spread through the 272 municipal wards in Delhi and one zone each for NDMC/Cantt. and Airport. The eligibility conditions to participate in the bidding process included:

- Any private legal entity or individual who had proof of filing Income Tax Returns for the last three assessment years, was eligible to participate in the bid for award of zonal licenses.
- The eligibility condition also mandated a net worth of 6 crore for participation in each zone, whereby a maximum of two zones could be awarded to a single entity.
- The license conditions also mentioned that no manufacturer or wholesale licensee was allowed to bid for zonal licenses.

Tender process was initiated (e-tender was published on 28 June 2021 and the last date for submission of e-bid was 20 July 2021) through a Notice Inviting Tender (NIT) inviting separate tenders for 32 zones via a three cover tender procedure i.e. Pre-Qualification Bid, Technical Bid and Financial bid. Technical bid provision was apparently incorporated with the objective of ensuring that once a bidder is awarded (declared highest bidder) two zones, his financial bid for the other zones will not be opened.

During the first tender, 123 bids were received for 32 zones by 28 bidders (one bidder was later disqualified) which led to award of 19 zones to 13 applicants (H1), with six bidders being awarded two zones each. In case of Airport zone, H1 could not be issued license due to not receiving No-objection Certificate (NOC) from Airport Authority and was awarded to another bidder who got NOC, at the H1 amount. In the second NIT for 12 zones, 92 bids were received for 12 zones by 12 bidders, which led to the award of remaining zones with four bidders getting two zones each. Thus, ultimately 20 out of 32 zones were allotted to 10 applicants, each being awarded two zones.

However, following design and process issues were noticed in the way zonal/retail licenses were granted under the new policy.

8.4.2.1 Increased risk of monopoly due to reduction in number of Retail licensees

One of the objectives of the new Excise Policy was to prevent formation of any monopoly or cartel. The issue of retail market being exclusively controlled by few people was flagged in both the reports i.e. the GoM and the Expert Committee. However, it was noticed that the policy provided for distribution of retail licenses in zones where one entity/person would get minimum 27 vends (1 Zone) as commented in **Paragraph 8.2.2.3**.

For the purpose of Retail Vends, Delhi was divided into 32 Zones (containing 849[43] vends) whose licenses were granted to 22 entities through tendering. Whereas, during the old policy, 377 retail vends were run by four Government Corporations and 262 retail vends were run by private individuals.

Therefore, this mechanism of distribution of retail licenses further concentrated the ownership and control of Retail licenses in very few hands, thus posing an increased risk of monopolization and cartel formation.

8.4.2.2 Viability of Zonal License applications not ensured through bidding documents

In order to ensure that timely Excise Revenue collection is not hampered, the Government needed to ascertain whether the business entity bidding for license is a going concern and is financially sustainable in a way that it can continue operations while complying with the legal and regulatory regime.

The only documents requisitioned for ascertaining the financial position of the bidder were Income Tax Return (ITR) for last three assessment years 2018-2021 and Chartered Accountant (CA) certificate showing Net Worth as on date.

It was noticed that the probable expenditure outgo from the Zonal Licensee included:

- ₹ 30 crore as EMD during bid submission
- 25 *per cent* of the License fee, as Security Deposit, within seven days of bid finalization, before the issue of L7Z license, amounting to an average of ₹ 70 crore[44] for a zone.

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[43] Operational Vend during February 2022 were 580 and during July 2022 were 468.

[44] 25 *per cent* of average annual license fee of ₹ 280 crore.

- Monthly license fee as advance before the 7th day of the month amounting to an average of ₹ 23 crore per zone.
- Expenditure on opening of vends with rent/ lease expenses, hiring of staff, furnishing and compliance for fire/ CCTV/ electrical/ design and stocking expenses.

Thus, the licensee would have to incur an upfront expenditure of at least ₹ 100 crore for a zone before revenue could be generated from sales.

Audit observed that the policy prescribed no minimum qualifying criteria regarding the financials of the applicant entity. This posed a risk of financially and managerial incompetent entities being awarded retail licenses, which could hamper the conduct of operations, thus impacting Excise Revenue.

It was further observed that from the documents furnished by the successful bidders that:

- Only 10 out of 22 entities reported an income of more than ₹ 1 lakh in any of the three years.
- Nine entities had reported zero income and/or losses in two of the three years.
- Five[45] entities reporting almost zero income, losses and zero to negligible taxes, were awarded 10 retail zones, two zones each

This indicated that the concomitant financial conditions of the bidders were not considered as red flags while issuing licenses.

8.4.2.3 Renewable nature of L-7Z zonal License

As per the Excise Policy 2021-22, Zonal Licenses granted after due bidding process was renewable without placing any limit to the period for which the same could be extended. License fee could be increased on annual basis to be determined by Government every year on the basis of actual sales. However, Excise Department did not decide the modalities for arriving at the revised license fee in subsequent years.

Further, modalities were not laid down to ensure financial viability of the business entity for second renewable year also, in case the entity was loss making after the first policy year operational period and resulted in low Net Worth, e.g. License of Path2Way HR Solutions was renewed though, the financial statements of the entity for the period 2021-22, showed a loss of ₹ 52 crore approximately and a Net Worth of negative ₹ 37 crore as of March 2022.

[45] Nova Garments, Khao Gali Restaurants, JSN Infratech, Path2way HR solutions and Magunta Agro. Magunta Agro paid income tax of ₹ 2.76 crore for the year 2019-20, however, operation income during the year was zero. It had also reported loss during the year 2020-21.

8.4.2.4 Absence of policy provision for surrender of zonal license

As discussed in **Paragraph 8.4.2.2**, the policy did not prescribe any baseline for financials (except for net worth), which resulted in financially weak entities being awarded zonal licenses. Ultimately majority of the zonal licensee surrendered their licenses before the termination of the Excise Policy, and no retendering was done in any instance.

Moreover, the policy did not contain any provision requiring the licensees to give advance notice for surrendering the zonal license so that the Department could initiate action for retendering. In the absence of such safeguard against sudden surrender of Licensees, there was a risk of substantial revenue loss on account of time taken to re-allot the zonal license through re-tendering during which no license fee will accrue. Thus, the Policy did not contain a contingency plan for avoiding loss due to discontinued operation of the retail zone since retendering for zonal licenses is a time-consuming process.

8.4.2.5 Detailed examination of complaints, received during the tender process, not conducted

Nine complaints were received (in last week of July 2021) against the Tender participants/ bidders during the Tender process. Tender Evaluation Committee was mandated to examine the complaints on the directions of Excise Commissioner. These nine complaints pertained to 14 applicants. While five complaints pertained to the ineligibility of the company to carry out liquor business as per its Memorandum of Association (MOA)/Article of Association (AOA), other complaints pertained to alleged relation of these zonal license applicants to certain distilleries. This was against Clause 2.3 of the eligibility condition in the Tender documents, which specifically mentioned that no manufacturer/wholesaler would be eligible to bid for Retail license and that retail licensees should not have any manufacturing facility in the country or abroad either directly or indirectly, through sister concern/ related entities.

Tender Evaluation Committee (TEC), tasked with examining the complaints by the Excise Commissioner, decided that a copy of these complaints be sent to applicants (without disclosing the identity of complainant) to receive their clarification in this regard, and that the credentials of these firms were to be verified from the Ministry of Corporate Affairs (MCA). Replies/ documents were received from these applicants categorically denying the allegations in the complaints. The TEC in its meeting on 3 August 2021 decided that due to paucity of time and advanced stage of tendering process, the scope of detailed examination/ cross examination of complaints/ documents submitted in response to the complaint was limited. Thus, all the complaints, clarification/ documents of applicants were to be taken on record as the tender conditions enabled punitive action in future, if needed.

Ultimately all the entities were allowed as eligible bidders and 11 out of these 14 entities were allotted 17 retail zones after being declared successful after bidding. It was seen in Audit that no detailed examination was conducted till the end of Excise Policy 2021-22.

Audit comments relating to instances of cross ownership through formation of alliances between L1 and L7Z have been included in the succeeding paragraphs.

8.4.3 Related Business entities holding licenses across the supply chain

Rule 35 of the Delhi Excise Rules, 2010 prescribes, *inter alia*, that no License for retail sale of liquor shall be granted to the holder of Wholesale license and *vice versa*.

New Excise Policy 2021-22 mentions that "Retail license holders should not have any manufacturing facilities/distilleries/breweries/ wineries anywhere in the country or abroad either directly or through any sister concerns/related entities. For this purpose, sister concerns/related entities shall mean that the entities should not have common proprietor or partners or directors. Majority ownership (51 *per cent* or more) of the proprietorship or partnership or company should not lie with the same person in all the entities. The entities should not have a holding-subsidiary relationship or not subsidiaries of the same holding company. Further, holder of L1 license (Wholesale) shall not own directly or indirectly any of the retail vends."

8.4.3.1 Limiting the scope of the criteria for determining relatedness

The relevant provisions in the earlier Excise Policy specifically stated that no person or his family member interested in any distillery or brewery or bottling plant holding license for wholesale distribution shall be given a Retail license. For this purpose, a person interested in the business of distillery, brewery, winery or bottling plant includes every person interested in these businesses as a member of Cooperative Society, Director, Partner, Agent or Employee. While applying for Retail license under the earlier policy, the applicants were also required to declare that it did not have any interest in the business of holder of any license under the Delhi Excise Act, 2009 during the last five years preceding the date of application.

However, the scope of criteria for determining relatedness was diluted in the new policy. The earlier policy criteria regarding "non-relatedness via partner, agent, family member" and "non-relatedness at any time in the past five years", where by the controlling influence could be exercised by one entity over another, e.g., through common minority shareholding, common promoter group or unsecured loans extended through common persons were excluded from the definition of related entities.

Such dilution in the conditions of the Policy resulted in grant of licenses to entities in which same persons were having common interest. Some notable cases where evidence of relationships between licensees/ common beneficial ownership, was observed have been discussed below:

- There was evidence of relationship between M/s Indospirit which was a Wholesale licensee and the Zonal licensee- M/s Khao Gali Restaurants, holding two zones. Khao Gali Restaurants is an associate company of M/s Indospirit Distribution Limited which has 35 *per cent* stake in M/s Indopsirit (wholesale licensee). Further, Director of Khao Gali was a director of an associated company of Indospirit Distribution Ltd.
- Wholesale licensee Mahadev Liquor was linked to the zonal licensee Bhagwati Transformer Corp, holding two zones, through Common Past Partnership in 2021 and family relations.
- In the case of the wholesaler, Gautam Wines, it was found that family shareholding connected it to the Liquor manufacturers, Oasis Distilleries Pvt. Ltd. and Vijeta Beverages Pvt. Ltd.
- The zonal licensee- Popular Spirits LLP was related to a manufacturer Buddy (Punjab) Bottlers Pvt. Ltd. through Common Partner/Director in 2021. Buddy (T1D) Retail Pvt. Ltd., the zonal licensee for Airport zone, was related to the manufacturer- Buddy (Punjab) Bottlers Pvt. Ltd. through Common Directorship in 2021.

Other relevant connections observed via common current/ past directorship, directorship in mediating entities, common shareholding and management etc. have been reported in **Annexure XVI**.

8.4.3.2 Insufficient documentation and analysis to identify relatedness

As per the new policy, the applicant was to only furnish an Affidavit (in the format Annexure B) declaring absence of any connection. The bidding documents requisitioned to assess eligibility for award of zonal licenses, were insufficient for ruling out common beneficial ownership between two business entities.

Further, the Department did not scrutinise the applications properly to ensure compliance to the conditions of the policy relating to related entities. It was noticed that even the subsequent complaints were only taken on record with no follow up as commented in **Paragraph 8.4.2.5**.

Apart from the instances of related business entities, Audit found statistical evidence of skewed supply pattern (as discussed in **Paragraph 8.4.4**) which could be a result of manipulation of normal supply pattern by the Zonal licensee and Wholesale licensee who have common business interests. This poses a risk of exclusivity arrangements and brand pushing.

8.4.4 Risk of exclusivity arrangements and Brand Pushing

Data taken from ESCIMS and the data of Transport Permits (TP) containing brand-wise movement from Wholesaler (L1) licensee to the retail vends in all the 32 zones, owned by 22 different business entities, were analysed to ascertain supply/demand patterns[46].

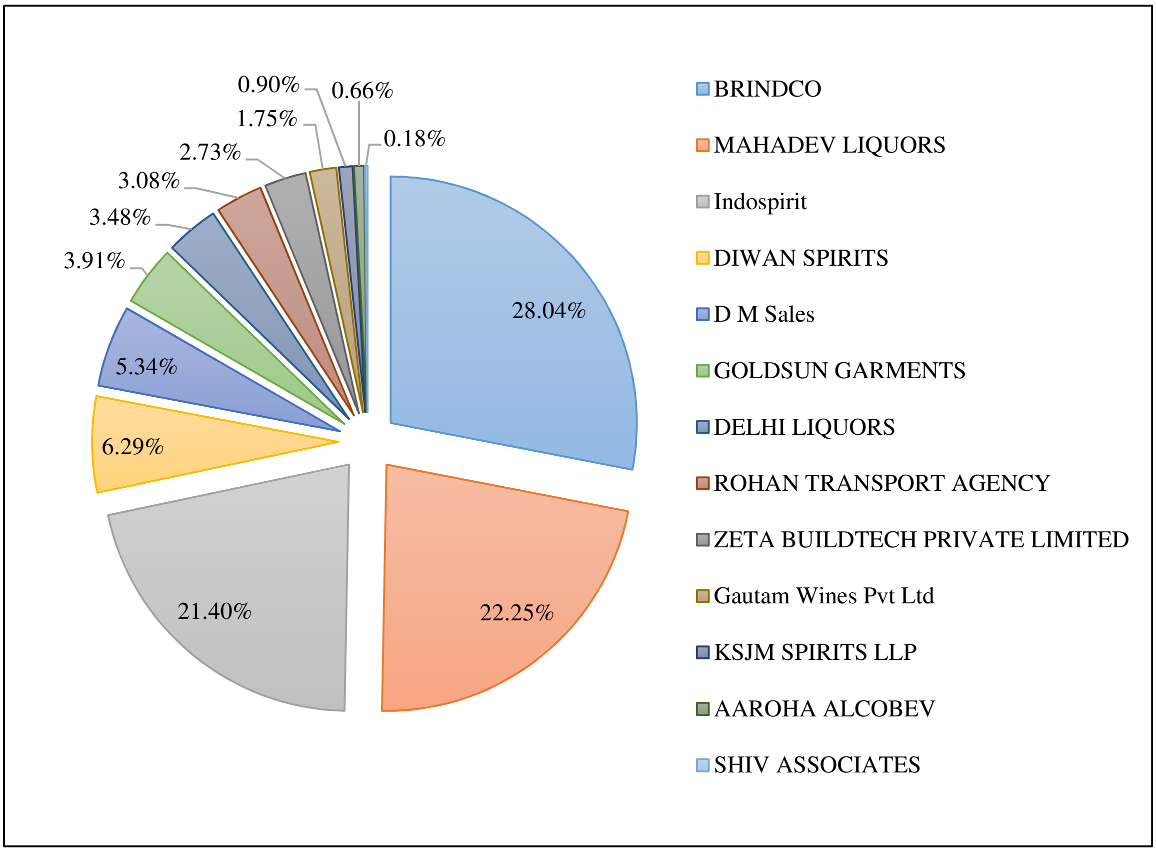
The policy mandated an exclusive arrangement between a manufacturer and wholesalers, which led to the entire supply of all brands of a particular manufacturer being controlled by only one wholesaler. This becomes particularly relevant considering the fact that although 367 IMFL brands were registered in Delhi, very few popular brands formed the bulk of sale volume. Top 10 brands accounted for the sale of 46.46 *per cent* of liquor sold in Delhi whereas top 25 brands accounted for 69.50 *per cent* of the liquor sold. Of these 25 top selling brands, Brindco and Mahadev Liquor exclusively supplied seven brands each, followed by Indospirit which exclusively supplied six brands.

Further, of the 367 brands of IMFL supplied by 13 Wholesale licensees, the highest number of brands were exclusively supplied by Indospirit (76 brands), followed by Mahadev Liquors (71 brands) and Brindco (45 brands). These three wholesalers also accounted for 71.70 *per cent* of volume of Liquor sold in Delhi. A pie chart depicting the relative market share of various wholesale licensees, in terms of volume of liquor sold, is given in **Chart 8.3**.

[46] For the purpose of analysis-

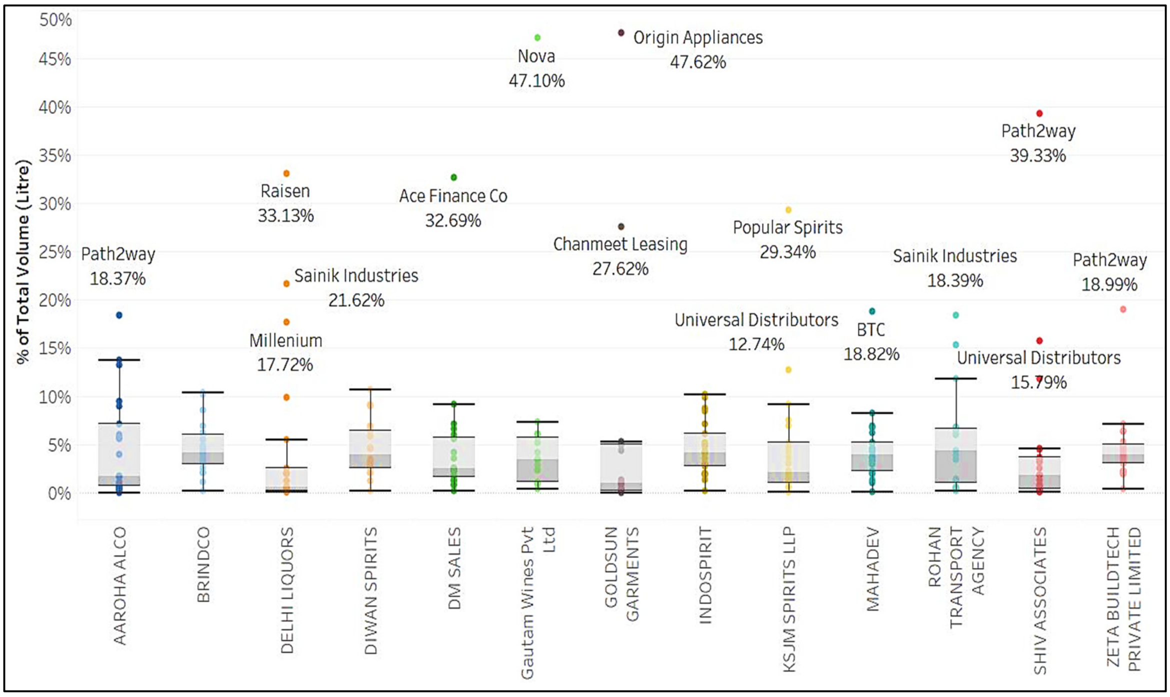
- Volume (in litres) of the liquor has been used as an aggregation metric.
- TP was used as a proxy for sale at vends.
- Consumer choice of brands across zones have been taken as uniform. This is valid for all zones except zone 31 (Organomix Ecosystems) and zone 32 (Buddy T1D retail) as these zones cater to NDMC area (a contiguous zone with no wards) and Airport retail shops respectively, each with likely distinct consumer preferences as compared to other zones.
- Indian Made Foreign Liquor (IMFL) forms an overwhelmingly large proportion of the total sale of liquor. Hence the data has been analysed only for supply of IMFL.
- The data has been taken only for the initial period of Excise Policy 2021-22 i.e. 17 November 2021 to 31 March 2022, during which all the zones were operational. After this period, surrender of different zones during May and July poses issues with comparability.

Chart 8.3: Relative Market Share of Wholesale Licensees



The supply of Liquor from wholesale licensees to the 22 business entities (holding 32 zones) was analysed. As the consumer preferences for 30 zones (excluding NDMC area and Airport zone) are assumed to be similar owing to the distribution of wards across Delhi, the supply from each wholesaler to retail entities, should be an average of 3.33 *per cent* for entities with one retail zone and 6.66 *per cent* for entities with two retail zones. It is normal that supply variations would occur as per normal distribution. However, there is a risk that certain business entities would corner a disproportionately large portion of supply from a specific Wholesale licensee. Thus, the supply distribution from wholesalers (shown at horizontal axis) to retail businesses has been analysed with a box and whisker plot in **Chart 8.4** which brings out outliers. These outliers represent Zonal licensees receiving abnormally high proportion of stock from a particular Wholesaler.

Chart 8.4: Skewed Liquor supply from Wholesaler to retail zones



Wholesalers

Overall analysis of the supply pattern of liquor in Delhi revealed the following:

1. The wholesale distribution of liquor was largely controlled (71.70 *per cent*) by three entities Indospirit, Brindco and Mahadev Liquor. The former two also exclusively supply brands of United Spirits (Diageo), United Breweries (Heineken) and Pernod Ricard, three of the largest domestic manufacturers of liquor.

2. Of the 22 business entities holding 32 retail zones, the top eight[47] business entities (in terms of volume of sale per zone) holding 10 zones, accounted for 44.79 *per cent* of the sale. In contrast, the bottom 10 zones (held by six[48] business entities) accounted for only 16.68 *per cent* of sale.

3. There were instances where a particular wholesaler supplied a statistically large proportion of its stock to a particular zonal Licensee which highlighting the risk of favourable business terms and/or close association between these wholesale licensees and respective zonal licensees. Also, some notable instances have been pointed out where a large proportion of sale of a zonal licensee was sourced from a particular wholesaler. Whereas this might not be an issue per-se in cases of procurement from wholesalers supplying popular brands, it could have

[47] Millenium Infra, Chanmeet Leasing, Popular Spirits, Origin Appliances, Sakriya, Multicity Hospitalities, Bhagwati Tranformer Corp (BTC), Raisen Marketing

[48] Nova Garments, Khao Gali Restaurants, Trident Chemphar, Organomix Ecosystems, Avantika Contractors, Buddy T1(D) Retail.

implications like brand pushing and limited consumer choice. Some examples are mentioned below, as seen from Chart 8.4.

- DM sales supplied 32.69 *per cent* of its total stock to Ace Finance Co. holding Zone 22, whereas the median value for supply was 2.53 *per cent*. Conversely Ace Finance procured 48.46 *per cent* of its total stock from DM sales.
- Delhi Liquors supplied 33.13 *per cent,* 21.62 *per cent* and 17.72 *per cent* of its total stock to three zones, Raisen Marketing (zone 13), Sainik Industries (Zone 17) and Millenium Infra (Zone 9) respectively, whereas the median value of supply was 0.56 *per cent*.
- Gautam Wines supplied 47.10 *per cent* of its stock to Nova Garments (Zone 11 and zone 15), whereas the median value for supply was 2.32 *per cent*.
- Khao Gali Restaurants Pvt. Ltd. (Zone 2 and 3) procured 45.26 *per cent* of its stock from M/s Indospirit. Thes two entities have been reported to be related, in the preceeding section.
- Goldsun Garments supplied 47.62 *per cent* and 27.62 *per cent* of its stock to Origin Appliances (Zones 14 and 16) and Chanmeet Leasing (Zone 28) respectively, whereas the median value of supply was 0.36 *per cent.*
- KSJM Spirits supplied 29.34 *per cent* of its stock to Popular Spirits (Zone 30) whereas the median value of supply was 2.12 *per cent*. Notably, these two entities are also related to each other through common directorship in related entities, as mentioned in Annexure XVI.
- Mahadev Liquors supplied 18.82 *per cent* of its stock to Bhagwati Transformer Corporation (Zone 1 and 27), whereas the median value for supply was 3.94 *per cent*. Conversely Bhagwati Transformer Corp. procured 50.97 *per cent* of its stock from Mahadev Liquor. Notably, Mahadev Liqour and Bhagwati Transformer corp are related by family ties, as pointed out in **Paragraph 8.4.3.1**.
- Shiv Associates supplied 39.33 *per cent* of its total stock to Path2Way (Zone 12 and 25).
- Rohan Transport Agency sold 18.39 *per cent* of its stock to Sainik Industries (Zone 17), whereas the median value for supply is 3.61 *per cent*.

4. Instances highlighting the risk of Brand Pushing were also observed where a large portion (statistical outlier) of a particular brand was sold through a particular zonal Licensee. The brand sales for a particular zone

is as a percentage of total sale of that brand across all Zones. The analysis was conducted for top 100 selling brands (each selling more than 85,785 litre) accounting for a total of 95.25 *per cent* of total liquor sold in the period under consideration. Some examples are mentioned below, where more than 20 *per cent* of a particular brand of liquor was sold by a single zone. These examples highlights links between the zonal licensees and domestic manufacturers of liquor products:

- Ace Finance (Zone 22) sold 23.89 *per cent*, 75.64 *per cent*, 99.20 *per cent* and 54.61 *per cent* of Royal Green, Double Blue, High Impact and Episode Whisky respectively, all supplied by DM Sales and manufactured by ADS Spirits. Other relatively lower selling brands of ADS spirit, Generation Classic Whisky and Moonwalk Vodka were also almost exclusively sold by Ace Finance. Ace Finance also sold more than 20 *per cent* of other brands (e.g. Bee Young beer and Godfather beer) supplied by DM sales.
- Clear pattern also emerges for top selling brands supplied by Delhi Liquors. Raisen Marketing (Zone 13) sold 29.71 *per cent* and 77.65 *per cent* of Hunter beer and Woodpecker beer manufactured by Som Distillers and supplied by Delhi Liquors. The relationship of these two entities, Raisen Marketing (retailer) and Som Distilleries (manufacturer), via shareholding pattern, has also been pointed by audit, as mentioned in Annexure XVI.
- For other top selling brands supplied by Delhi Liquors, Wave beer and Evening special whisky, more than 80 *per cent* of the stock was sold by three zones (Raisen Marketing, Millenium Infra and Sainik Industries) only.
- Gautam Wines supplied two top selling brands manufactured by Oasis Distilleries, All Seasons whisky and Batch 9 whisky, 39.59 *per cent* and 99.41 *per cent* of which were sold by Nova Garments (Zone 11 and Zone 15) only. Nova Garments also sold more than 90 *per cent* of other relatively lower selling products manufactured by Oasis distilleries. The relationship between these two entities, Nova Garments (retailer) and Oasis Distilleries (manufacturer), via common directorship, has also been pointed by audit, as mentioned in Annexure XVI.
- Universal Distributors (Zone 19 and 29) sold 46.67 *per cent* of Party Special Whisky, manufactured by NV Distilleries.
- For four brands manufactured by Empire Alcobrev under "Old Habbit" and "Bottoms Up" brand names, Chanmeet leasing

(Zone 28) and Origin Appliances (Zone 14 and 16) sold more than 75 *per cent* of total supply.

Existence of related entities in the Wholesale and Retail licenses resulted in skewed distribution of various brands of liquor. This was not in line with the objective of providing choice to consumers as per the Excise Policy 2021-22.

8.5 Losses amounting to approximately ₹ 2,002.68 crore

8.5.1 Loss of revenue of about ₹ 941.53 crore due to not taking timely permissions

Prior to the implementation of Master Plan Delhi (MPD)-2021 in 2007, four Government Corporations were allowed to open 116 retail vends in non-conforming[49] areas over the years. MPD-2021 prohibited opening of liquor shops in mixed land use/non-conforming areas. Since then, no new retail vend was allowed in non-conforming areas. Only these 116 Retail vends were renewed till 2016-17 which was further reduced to 51 and their licenses were renewed up to 31 March 2021.

It was made mandatory in the Excise Policy 2021-22 to open at least two retail vends in each ward to ensure equitable coverage so that there was no instance of un-served and underserved areas in Delhi. However, as per the Tender document, vends were not to be located in a non-conforming area and in case the proposed vend was in a non-conforming area, the same had to be considered with the prior approval of the Government.

Audit observed that in spite of being aware of the fact that vends were required to be opened in non-conforming wards, the Department did not take timely action to work out modalities for the same before tendering. Excise Policy for the year 2021-22 and Terms and Conditions of licenses were approved on 24 May 2021. Initial tender was floated on 28 June 2021 without taking comments from Delhi Development Authority (DDA) or Municipal Corporation of Delhi (MCD) and licenses were allotted in August 2021 even before this issue was sorted out. Vends were scheduled to start operations from 17 November 2021. However, DDA vide letter dated 16 November 2021 disallowed opening of liquor shops in non-conforming wards as it would be against the spirit of the Delhi Master Plan.

The licensees approached High Court which granted them exemption on 9 December 2021 from paying any license fee in respect of mandatory vends in 67 non-conforming wards. This resulted in exemption of license fee of ₹ 114.50 crore per month. Non sorting out of the issue of vends in non-conforming areas

[49] Non-conforming areas are areas which do not conform to land use norms for opening of liquor vends.

before NIT, resulted into this exemption and a cumulative loss of nearly ₹ 941.53[50] crore.

8.5.2 Re-tendering of surrendered zones not done leading to loss of revenue of around ₹ 890.15 crore

It was observed that 19[51] zonal licensees had surrendered their licenses before the policy expired in August 2022, four in March 2022, five in May 2022 and ten Zones in July 2022. However, no retendering process was initiated by the Excise Department to operationalize the retail vends in these zones. Consequently, no Excise Revenue accrued as License fee from these zones in the months after surrender. Notably, no other contingent arrangement was put in place to continue liquor retail in these zones.

The Excise Department suffered a loss of approximately ₹ 890.15 crore on account of License fee from these zones owing to their surrender and failure of the Department in re-tendering. Loss of Excise Revenue has been calculated on the basis of actual license fee for the months[52] for which surrendered zones were non-operational and after accounting for the waiver offered on account of non-conforming wards.

This issue is reflective of mismanagement of the Department in its inability to timely introduce new policy, its inability to retender after discontinuation of a retail license at the term end and failing to put an enabling clause in the terms and condition of license to accommodate such eventuality.

8.5.3 Loss of revenue of ₹ 144 crore owing to irregular grant of waiver on account of COVID to zonal licensees

A representation was received by the Excise Department from L-7Z Licensees for proportionate waiver/ reduction in license fee due to COVID restrictions issued by the DDMA orders dated 28 December 2021 and 4 January 2022. The representation was submitted by the licensees in pursuance of the Hon'ble High Court order dated 06 January 2022 which directed the Department to pass a speaking and reasoned orders in this regard.

The Excise Department and Finance Department of GNCT of Delhi had examined the representation and after examination, the following were stated:

1) Clause 27.1 of tender documents dated 13 August 2021, inter-alia, mentioned that any commercial risks shall lie with the Licensee.

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50 The revenue was collected for some vends, erroneously opened, in non-conforming areas for short periods of time. This amount is difficult to calculate precisely and could lead to the downward revision of approximated figure of ₹ 941.53 crore by a very limited extant.

51 Out of the 10 business entities who had been awarded two zones each, seven entities surrendered one zone each in either March 2022 or May 2022 while retaining the other zone for operation. One licensee surrendered both the zones in July 2022 and only two entities could continue operating both zones till the end of policy period in August 2022.

52 Five months -Four licensees, Three months – Five licensees, One month – Ten licensees.

2) During pre-bid meeting, the Department had informed the prospective bidders that there is no provision for force majeure in the tender documents and the Government may issue appropriate orders at later stage.
3) The Excise Department categorically stated that there is no provision in tender document for reduction of license fees of the licensees on grounds like decreasing in sales hour/ opening of vends on the basis of odd-even rules/ restriction in social gathering and complete lockdown on weekends. These restrictions are in the nature of commercial risks as categorically stated in clause 27.1 of tender document mentioned *ibid*, which do not justify the claim of reduction in license fee much in the same manner as an increase in the sales during festival/ marriage season does not entail an increase in the demand of license fee from the licensee. Moreover, the relaxation granted by the Government to the HCR segment in previous lockdown regarding the payment of license fee cannot be compared to the current retail license fees as the two license regimes are entirely different in nature.
4) Further, the Excise Department stated that there is a decrease of sales of liquor bottles by nine *per cent* during the period 28 December 2021 to 6 January 2022 as against the sale of liquor bottles from 1 December 2021 to 27 December 2021. However, the reduction in sales is also not uniform across all zones as some of the zones have also experienced increased average sale during this period. This analysis is also not conclusive because the number of vends opened during the month of December varied and gradually increased as more and more vends opened in December. Hence, the demand of licensees for relaxation of license fees on the pretext of COVID restriction does not hold merit as there is no significant impact on volume of sales in Liquor in Delhi during the COVID restriction period as compared to the pre-COVID restriction period.

With the above reasons, the Excise and Finance Departments proposed that proportionate waiver/ reduction in license fee due to COVID restrictions may not be considered as there is no provision in the Tender Document with regard to the reduction of license fee in any such circumstances. This proposal was turned down by the Minister in charge of the Department and grant of waiver to each Zonal licensee for the closed vends during the period from 28 December 2021 to 27 January 2022 was approved with the reasons that during the previous COVID related lockdown period, the Government had given the benefit of pro-rata fee waiver to restaurants. This resulted into the loss of approximately ₹ 144 crore to the Government. The relaxation granted to the HCR segment in previous lockdown regarding the payment of license fee cannot be compared to the current retail license fee as the two license regimes were entirely different in nature. Moreover, as per the Cabinet Note No 3003 (dated 21.05.2021) any amendment made at the time of implementation may be placed before the

Council of Ministers at the time of implementation. However, this wavier to licensees was granted before taking approval from the Council of Ministers.

8.5.4 Incorrect collection of Security Deposit from zonal Licensees, leading to loss of revenue of around ₹ 27 Crore

Clause 3.1.3 of the tender conditions cited Rule 48(12) of Delhi Excise Rules and mentioned that the Security Deposit "to match 25 *per cent* of the pro rata annual license fee" was to be submitted by the zonal licensees within seven days of the issue of Letter of Acceptance. However, Rule 48(12) of the Delhi Excise Rules mentions 25 *per cent* of the Annual License Fee and not of pro-rata annual license fee.

Security Deposit with the Excise Department provides it a risk cover against a possible default by the zonal licensee. The amount of 25 *per cent* of Annual License fee, in essence provided a risk cover for three months against a possible default scenario i.e. if the licensee defaulted on payments and could not clear his dues till the end of a month, punitive action against the licensee could be initiated and process to retender for Zone could be done or alternative option could be explored to continue operations in the Zone within three months so that the Department would not incur losses on account of foregone revenue due to discontinued operations.

As the zonal retail operations could begin only in mid-November, after substantial delay in the rollout of Excise Policy 2021-22, the policy year 2021-22 was effective for four and a half month only. The License fee was charged on a pro rata basis and so was the security deposit @ 25 *per cent* of pro-rata License Fee. This security cover therefore ensured risk cover for only about one month. Thus, the Department became more vulnerable against default by the licensee. Excise Department decided on 20 January 2022 (without taking approval from Cabinet) not to take any coercive action of cancellation of license due to any default of payment of license fee till the end of Excise Year 2021-22. This led to an increased risk of losing Excise revenue if the licensee suddenly discontinued operations. The feasibility of retendering or exploring viable alternative for continuing operations in the intervening period was even less

Audit observed two cases where the Zonal licensees abruptly surrendered license and failed to pay the pending license fee even after adjustment of Security Deposit. In case of Zone 8, the licensee discontinued operation in March 2022 without paying complete dues. As per the Excise Department, the cumulative dues as owed to the Department as on 17 March 2022, was ₹ 47.46 crore and the Security Deposit with the Department was only ₹ 30 crore leaving ₹ 17.46 crore recoverable at the end of March 2022. Similarly, the licensee of Zone 30 discontinued operation in the mid of July 2022 and as per the Excise Department, ₹ 9.82 crore was pending after adjustment of Security Deposit. This resulted in a cumulative unrealised amount of ₹ 27 crore.

Audit also observed that the amount of outstanding dues recoverable from the above two zonal licensees, as worked out by the Excise Department, was not correct and has been discussed in **Paragraph 8.6.3**.

8.6 Other issues

8.6.1 Tender not floated for Super Premium vends resulting in a loss of opportunity to earn additional revenue

As per Delhi Excise Policy 2021-22, licenses in the form of five Super Premium (L7-SP1) vends (with larger floor area of 2500 sq. ft. with 10 *per cent* space for selling ancillary products) were to be issued to a single entity through a separate tender. These vends were to have a minimum License Fee equal to two and half times of the average reserve license fee of a vend in Delhi. These vends were to be opened in the same retail zones awarded earlier through conversion of one or more retail vends into super premium vends and adjustment of License fee accordingly. However, tendering for these vends was not done. Failure of the Department in tendering for these super premium vends led to loss of opportunity to earn additional license fee from these vends based on proposed reserve price for these vends.

8.6.2 Irregular opening of vends in non-confirming wards

MPD-2021 prohibited opening of liquor shops in mixed land use/non-conforming areas. Cabinet had approved the proposal of Excise Department to open vends in non-conforming wards on 5 November 2021 and the same was approved by the Lieutenant Governor on 15 November 2021 subject to the condition that approval from concerned MCD and DDA is mandatory.

Audit selected four zones (Zone 3, 14, 23 and 25) through random sampling for detailed examination. Audit observed that out of these four Zones, four Vends of Zone 23 were opened in non-conforming wards. In Zone 23, there were three non-conforming Wards 33N, 30S and 97S. Details of four vends opened in these Wards are given in **Annexure XVII**. The Department had allowed retailers to open these four Vends in non-conforming Wards without getting any approval from DDA and MCD.

Audit further noticed that Inspection teams were formed to conduct Inspections of proposed shops to assess the suitability of the premises for vends as per the provisions of the Delhi Excise Act, Delhi Excise Rules, terms and conditions and Excise Policy. In all four Wards mentioned in **Annexure XVII**, inspection team declared that premises were situated in conforming/commercial area. Audit observed that:

- In applications for two vends (Sl. Nos. 1 and 2 of Annexure XVII), licensee itself mentioned that land use category of the shop was "mixed land use"/"residential". Further, the Licensee provided an Urban Development (UD) Department notification of commercial road/street as supporting documents for these vends but Audit noticed that location of vend at Sl.

No. 1 was around 10 km away[53] and location of vend at Sl. No. 2 was around three km away[54].

- For vend at Sl. No. 3 of Annexure-XVII, licensee had submitted the conversion charge slip as proof of shop being commercial but that did not confirm whether that conversion slip was for mixed land use or commercial land. The licensee also did not submit any certificate from MCD declaring that the shop comes under commercial area.

All these four vends were sealed by the MCD in January-February 2022. The manner of ascertaining that these vends were located in conforming area by the inspection team clearly shows that Inspection team did not properly scrutinise the above mentioned documents before declaring that premises were located in conforming area.

8.6.3 Discrepancies in calculating the pending License fee amount

As per the tender conditions, licensees were required to pay the license fee in advance by the 7th of the month in which he begins his business. Failure to pay fee in time attracted interest on the amount due at 12 *per cent* per annum and also penalty at the rate of 0.1 *per cent* per day, if the default continued beyond the 15th day of the month. Failure to pay all the dues by the last day of the month entailed forfeiture of security deposit, cancellation of license and prohibition from participating in any other tendering process for a period of two years.

Licensees of Zone 8 and 30 had surrendered the zonal licenses without paying their pending dues including license fee, interest and penalty on 17 March 2022 and 12 July 2022 respectively. Audit observed discrepancies in calculation of dues in respect of these zones. For Zone 8, during calculation of interest of pending amount of license fee of conforming wards for the month of November and December 2021, Excise Department had not calculated the interest and penalty up to 17 March 2022 as done in respect of other months. Also, for the month of January 2022, the licensee had paid partial license fee before due date but interest for six days on the partially paid amount was wrongly included in the dues. Besides, in the months of February and March 2022, there was excess calculation of interest on outstanding amount due to levy of interest from first date of the month instead of from the date next following the due date. Net effect of errors in calculation was inflation of dues by ₹ 24.20 lakh.

Similarly, in case of Zone 30, in some months, there was excess calculation of interest on outstanding amount due to levy of interest from first date of the month instead of from the date next following the due date. This resulted in inflation of dues by ₹ 4.65 lakh.

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[53] from the Sector-18, Rohini, whose reference was taken from UD Department notification

[54] from the main Badarpur Market whose reference was taken from UD Department notification

8.6.4 Critical post of DC (Wholesale Operations) for monitoring and regulation not designated

As per Clause 3.1.11 of Delhi Excise Policy for the year 2021-22 "An officer to be designated as Deputy Commissioner (Wholesale Operations). The officer shall have the following responsibilities: - (i) To prevent unfair trade practices, to monitor operations and ensure overall supervision of wholesale dealers, (ii) To constantly monitor demand supply patterns, assure normalization of supplies, (iii) To prevent supply of spurious and adulterated liquor by manufacturers, vend owners and wholesale distributors (iv) To ensure equitable distribution of stock among all vends by wholesalers, (v) To ensure no wholesale licensee encourage brand pushing, (vi) To ensure no branding violations are encouraged by wholesalers, (vii) To ensure track and trace under ESCIMS." Clause of 4.6.2 of Delhi Excise Policy for the year 2021-22 also makes provision regarding appointment of DC (Wholesale Operations).

It is evident from the above that the post of DC (Wholesale Operations) was an important one, as envisaged by the policy. DC (Wholesale Operations) was supposed to perform a wide range of functions relating to monitoring and regulation, which had implications on quality of liquor, brand pushing etc. However, as per reply received from the Department, there was "no work assigned as *"Wholesale Operation"* in respect of Deputy Commissioner". Thus, no officer was designated as DC (Wholesale Operations) during the Excise year 2021-22, which pointed to non-adherence of the provisions in the policy.

8.6.5 Quality of liquor supplied not ensured

(i) Laboratory at warehouse, Batch Testing & Uploading of reports onto ESCIMS

As per Rule 55(10) of Delhi Excise (Amendment) Rules, 2021, every L-1 Licensee shall set up a Government approved laboratory at their warehouses to randomly check the presence of sub-standard liquor or spurious liquor in each batch of liquor received from the manufacturers and mandatorily inform the Excise Department in case any sub-standard liquor or spurious liquor is found in the supplies. As per Excise Policy 2021-22, Excise Department had to issue Standard Operating Procedure (guidelines) in this regard separately.

The licensees were required to set up the laboratories before granting the license. However, Excise Department issued guidelines for setting up of Laboratory on 9 November 2021 whereas the Excise Policy was to be implemented from 17 November 2021. One of the licensees had made representation and asked for six to eight weeks' time for setting up laboratories.

The essential pre-condition to set up laboratories to ensure quality of liquor supplied was not enforced by the Excise Department due to delay in issuing guidelines by the Department. The licensees were allowed extension of two months till 16 January 2022 initially for setting up of the laboratory even though there was no provision for this in the Policy. Further extension till 31 March 2022 was granted citing reasons related to COVID. Even after this extension, laboratories were set up only in 19[55] out of 62 warehouses and even in these laboratories, batch testing was not started.

Audit test check of the records relating to one warehouse each of five L-1 licensees (M/s Indospirits, M/s Brindco Sale Pvt. Ltd., M/s Mahadev Liquors, M/s DM Sales & M/s Delhi Liquors) revealed that the laboratories were setup between 17 January 2022 to 29 March 2022, i.e. with delays ranging from 61 to 132 days. There was further delay in inspection of these laboratories by the Excise Department as these were done between 15 March 2022 and 4 April 2022 which delayed batch testing in these labs, as testing could not begin before the inspection.

The licensees were also required to upload data of all test results of samples on regular basis on ESCIMS portal. However, the ESCIMS module to upload the test reports was not made functional in the Excise year 2021-22 which was under implementation. As per the records made available to Audit, the last communication in this regard was dated 20 July 2022.

- Moreover, as per Excise Department order dated 30 December 2021, Import Permit module i.e. rights of L-1 licensees to import liquor were to be blocked if status of labs were not furnished by expiry date i.e. 16 January 2022. Similarly, as per circular dated 16 March 2022, Transport Permit generation was to be stopped if labs were not setup by 31 March 2022. It is evident from this that there was provision for action against licensees if labs were not set up, and Excise Department was not informed about the setting up of the lab by L1 licensee. The Department had not informed Audit whether any action was taken against the licensees for not setting up the labs even after the extended deadline of 31 March 2022.
- The provision relating to establishment of lab at warehouse was not retained in the Terms & Conditions for the grant of L1 license in the Excise year 2022-23. Thus, the essential condition of batch testing at labs of warehouses was not implemented during Excise year 2021-22, and further the important requirement of having labs at warehouses was itself removed from the Terms & Conditions in the year 2022-23.

The conditions for setting up of labs at warehouses and batch testing were incorporated in the Rules, Policy and Terms and Conditions for the Excise Year 2021-22 to ensure that liquor received from manufacturers/distilleries are of required quality and no spurious liquor is sent to the retail vends and HCRs in Delhi, and consumers do not consume substandard liquor. Ensuring the quality of liquor supplied in Delhi is consonant with the primary objective of Excise Department i.e., to regulate, control and monitor the sale and consumption of liquor.

However, all the above Audit observations establish the fact that the Excise Department did not ensure that the essential requirement of establishment of

[55] Set up between 17 January 2022 to 31 March 2022

laboratory at warehouses and batch testing was enforced, as mandated by amended Excise Rules, Excise policy and Terms & Conditions for L-1 for the Excise Year 2021-22.

(ii) State-of-the-art lab not set up

As per clause 4.6.4 of Delhi Excise Policy for the year 2021-22, "Supply of spurious liquor is a serious public health hazard. To keep this in check the Government of Delhi will setup a state-of-the-art lab which will specialize in detecting spurious and counterfeit liquor." However, no state-of-the-art-lab was set up by Excise Department as mandated in the policy for the Excise year 2021-22. This further established the fact that the provisions to ensure the quality of liquor were not taken seriously by the Department.

(iii) Special Teams for Sample Collection not constituted

As per clause 4.6.3 of Delhi Excise Policy for the year 2021-22, "Constitution of special teams for sample collection: Teams will be set up to systematically pick up samples from bonded warehouses, retail vends, hotels, clubs and restaurants across all brands and the report of the same will be published on the website. Any L-1 license holder or retail shop owner found in possession of spurious liquor will lose their entire license and will be subject to criminal proceedings as per applicable laws. They will be permanently blacklisted and barred from operating in Delhi and in good faith, the information of the same will be provided to the Excise Department of all other States."

Information regarding Constitution of Special Teams for Sample Collection was requisitioned from the Department. However, no reply was provided to Audit in spite of multiple reminders. Hence, it could not be verified by Audit that such special teams were eve constituted by Excise Department during the Excise year 2021-22.

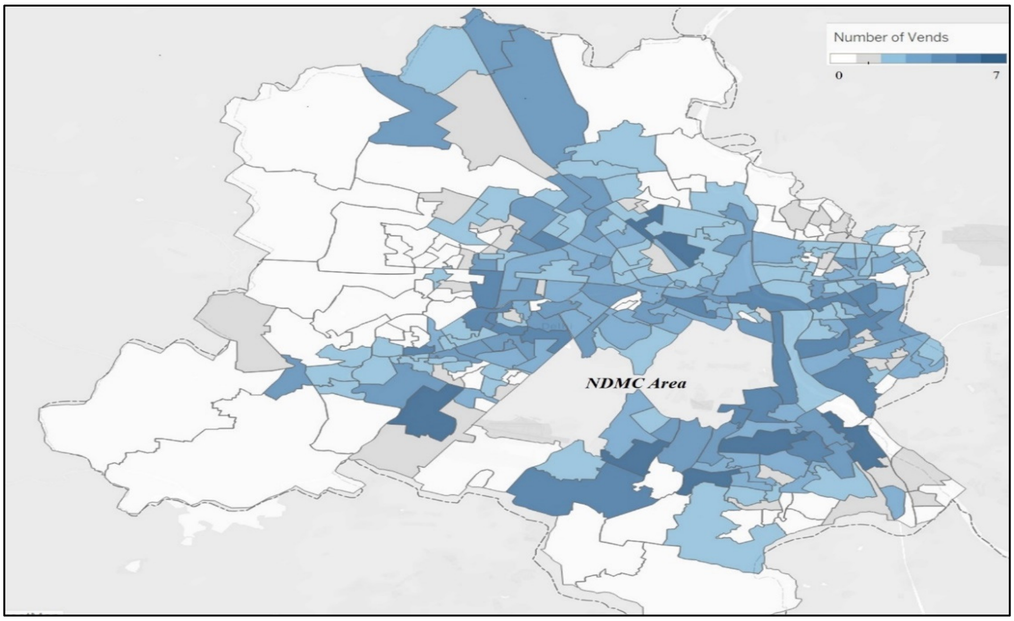
8.6.6 Trends in sales of liquor and Geographical Distribution of the retail vends across the geographical area of Delhi

The sale during the nine months spanning December 2021 to August 2022, when the new policy remained in place, was 64.82 crore bottles compared to 58.19 crore bottles sold during the comparable period of December 2018 to August 2019[56]. Thus, the new policy witnessed an increased sale of around 11.40 *per cent* compared to the previous regime. However, the new policy did away with the levy and collection of revenue on per bottle basis, in favour of advance revenue collection on presumptive sales figure based on financial year 2019-20. This emphasis on presumptive revenue collection through bidding also gave an incentive to retailers to ramp up the volume of sale (via Economy of scale as well as deep discounting) without concomitant revenue to Government.

[56] This period between December 2018 and August 2019 has been used to compare because it is the most recent relevant period encompassing same months during which the sale was not affected due to COVID-19 induced restrictions.

One of the cornerstones of the Excise Policy 2021-22 was equitable distribution of liquor retail vends across Delhi to facilitate access to quality liquor and to discourage illegal sale. However, this objective could not be fulfilled in practice because vends could not be opened as planned due to circumstances discussed in **Paragraph 8.5.1**. The actual vend distribution (February 2022) has been visually shown in the **Chart 8.5**. The wards marked with white did not have a single vend and the wards with shaded colour scale contains vends ranging from 1 to 5 from light to dark.

Chart 8.5: Geographical distribution of vends in Delhi (February 2022)



The distribution shows that certain wards were over-served as they contained many liquor retail vends whereas the others had no retail vends

8.6.7 Excise Intelligence Bureau and Confiscation

Data for Excise Intelligence Bureau (EIB) & Confiscation for the Excise Year 2021-22 was requisitioned from the Excise Department. However, no reply was provided to Audit in spite of multiple reminders. Therefore, audit could not review the functioning of EIB including checking of interstate smuggling of various intoxicants as well as detection of illegal liquor trade.

8.7 Conclusion

Several fundamental changes were effected in the Excise policy 2021-22 relating to levy and collection of Excise duty, administration of liquor supply chain, and coverage of retail operations. The actual policy contained provisions which were at variance with the underlying objectives for change in policy and the Expert Committee report. Necessary permissions from the Council of Ministers were found lacking in some decisions which had revenue implications. The new policy was fraught with design issues as the imposed exclusivity arrangement between manufacturers and wholesalers and formation of retail zone with a minimum of 27 wards each, increased the risk of monopolisation and cartel formation.

Actual implementation was sub-optimal and objectives behind the policy were not achieved. Vends in non-conforming wards could not be opened and equitable distribution of retail vends could not be achieved. Issue and management of zonal licenses had major shortcomings. There was lack of scrutiny of the business entities with regards to their financial wherewithal and management expertise. Instances of related business entities holding licenses across the liquor supply chain were noticed. Liquor supply data indicates exclusivity arrangements between zonal licensees and wholesalers and Brand Pushing. Surrender of zonal licenses during the extended policy period further led to substantial revenue loss. Other important measures which were planned in the policy, like setting up of laboratories and batch testing for quality assurance, setting up of super premium vends etc., were not implemented. Responsibility and accountability should be fixed for the lapses observed and the Enforcement mechanism should be strengthened.

New Delhi **(AMAN DEEP CHATHA)**
Dated: 03 March 2024 **Principal Accountant General (Audit), Delhi**

Countersigned

New Delhi **(GIRISH CHANDRA MURMU)**
Dated: 04 March 2024 **Comptroller and Auditor General of India**