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Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

SUMMARY OF THE LIQUOR AMENDMENT REGULATIONS 2020

1. Introduction

The Department of Trade, Industry and Competition (**dtic**) is publishing this discussion document (Annexure A) to solicit the views on the proposed Liquor Amendment Regulations 2020 (regulations). The aim of the regulations is to amend the National Liquor Regulations No.8040 published in Government Gazette 26689 of 2004, the National Liquor Amendment Regulations No. 82 published in Government Gazette No. 30713 of 2008 and National Liquor Amendment Regulations No. 928 published in Government Gazette 37091 issued in terms of section 42 of the National Liquor Act.

The discussion document is not a replacement for a legislative process and the normal public consultation process wherein the public comments or participates and it does not preclude the public from later commenting/ participating on the regulations once published in the Government Gazette. This discussion document creates an informal platform for **the dtic** and the public to engage on possible areas for consideration.

Written input on the discussion document can be e-mailed to CMakaepea@thedtic.gov.za by no later than 15 September 2020.

Mr MacDonald Netshitenzhe
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Date:



2. Discussion

The National Liquor Act establishes structures through which the National Liquor Act is enforced, the National Liquor Authority (NLA). It is through the NLA that the Minister oversees liquor regulation and enforcement issues, within the current legislative framework. The NLA has during its day to day business and implementation of the provisions in the National Liquor Regulations and National Liquor Amendment Regulations experienced challenges that warrant amendments to the said regulations. The amendments will ensure that that the regulation of the liquor industry continues to be conducted in an efficient and effective manner taking into consideration the objectives of the National Liquor Act.

Amendment of regulation 2 (interpretation)

Regulation 2 is amended to insert definition of alter, annual turnover, BBB-EE Code of good practice, foreign nationals, Online case management system; and amend the definition of file and certified copy.

Amendment of regulation 8 (Form of notices and applications)

Regulation 8 is amended by insertion of 8(A) to ensure that whenever a notice or application is required in terms of this Act or provisions of these Regulations, such document must be filed subject to any conditions or instructions in the prescribed manner and form. This is to clarify that the instructions on the NLA forms, are part of the regulations and also need to be adhered to.

Amendment of regulation 9 (Form of certificates and notices issued by Minister)

Regulation 9 is amended to ensure how specific forms will be received and certificate to be issued.



Amendment of regulation 13 (General registration requirements)

Regulation 13 regulates registrants as manufacturers and or distributors in terms of section 11 of the National Liquor Act. The current application requirements are ambiguous and permit different interpretations, hence the proposed amendments. The requirements distinguish between the natural person and a juristic person, including Trust.

Amendment of regulation 14 (Review of notification)

Regulation 14 is amended to allow the NLA, within 14 business days after receiving an application in terms of section 11, to reject any application filed with incomplete information, or non-payment; or request additional or corrected information.

Amendment of regulation 15A (Annual renewal of registration) as amended by Regulation 15A of 2008

Regulation 15A is amended by the insertion of 1(A) setting information to be filed by the registrant in an annual information return, for the renewal of a registration.

Amendment of regulation 16 (Other applications)

Regulation 16 is amended by inserting requirements for the application for relocation and alteration. Further, there is an insertion of sub-regulation (5) wherein a registrant wishing to register new premises must file NLA 1 and pay prescribed application fee.

Amendment of regulation 21

Regulation 21 regulate registered distributors' trading hours. The proposal is to amend the current trading hours to align with the liquor norms and standards. Distributors therefore have to conduct their business from 06:00 to 18:00 on Monday to Saturday and from 09:00 to 17:00 on Sundays and public holidays.



Amendment of regulation 22

Regulation 22 regulates the keeping of records by distributors of persons including entities to which liquor has been sold. Regulation 22 is amended to ensure that records for distribution licence holders with a threshold of over 25 litres of liquor supply, must be kept for a period of five years from the date of sale; and that all registrants should display original valid liquor registration certificate at the registered premises. This is also to align with the liquor norms and standards.

Transitional arrangements

There is also transitional arrangements for registrant who wishes to file any application required for alterations, relocations, renewal where the online case management system has not been opened for such application. Thus, upon coming into effect of these Regulations, the manual filing of such application will be allowed for a period of five years or such earlier period as will be determined by the Minister by Notice in the Government Gazette.



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ANNEXURE A

LIQUOR ACT, 59 OF 2003

LIQUOR AMENDMENT REGULATIONS, 2020



GENERAL EXPLANATORY NOTE

- _____ Words underlined with a solid line indicate insertions in existing Regulations
- [] Words in bold typed in a square brackets indicate omissions from existing enactment
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SCHEDULE

Amendment of Regulation 2 of the Regulations

1. Regulation 2 of the Regulation is hereby amended by –
 - (a) The insertion after the definition of “Act” of the following definition:
“alter’ means the altering by a registrant of the nature or conduct of its activities and shall exclude the adding or removing of premises;

‘annual turnover’ means the volume or value of annual sales or services, that is, the net of taxes and discounts on a yearly basis;”;
 - (b) The insertion after the definition of “annual turnover” of the following definition:

“BBB-EE Code of good practice’ means Broad-Based-Black Economic Empowerment codes of good practice as issued by the Minister responsible for Trade and Industry from time to time in terms of Broad-Based-Black Economic Empowerment Act, 2013 (Act No. 53 of 2003);”;



- (c) The substitution for the definition of “certified copy” of the following definition:

“‘certified copy’ means a copy of a document certified by a commissioner of oath for a period of no more than 3 months;”;

- (d) The substitution for the definition of “file” of the following definition:

“‘file’, when used as a verb, means to deposit through on line case management system of [with] the National Liquor Authority;”;

- (e) The insertion after the definition of “file” of the following definition:

“‘foreign national’ means an individual who is not a South African citizen or does not have a permanent residence permit issued in terms of the Immigration Act, 2002 (Act No.13 of 2002) and the Refugees Act, 1998 (Act No. 130 of 1998) respectively;”;

- (f) The insertion after the definition of “National Liquor Authority” of the following definition:

“‘Online case management system’ means the online system used for depositing any documents for applications and satisfying any requirements for manufacturing and distribution of liquor with the National Liquor Authority.”.

Amendment of Regulation 8 of the Regulations

2. Regulation 8 is hereby amended by –

- (a) the substitution for Regulation 8, as amendment by Regulation 8 of 2013 for the following sub- regulations:



“8. Form of notice and applications

Whenever a notice or application is made in terms of this, Act, or an item of these Regulations, shown in column 1 or Table NLA 2, for a purpose listed in column 2 of the Table, the document must be in the form of the annexure listed opposite that section number in column 3 of that Table, and must be produced subject to any conditions listed opposite that section number in column 4 of the Table”.

- (b) the insertion after Regulation 8 of the following sub-regulation:

“(8A) Whenever a notice, application or document is required in terms of this Act or provisions of these Regulations, such notice, application or document must be filed or delivered as the case may be subject to any conditions or instructions and be substantially in the prescribed manner and form”.

Amendment of Regulation 9 of the Regulations

3. Regulation 9 of the Regulations is hereby amended by –

- (a) The substitution of sub-regulation (1) of the following sub-regulation:

“(1) Whenever the Minister or the National Liquor Authority is required to issue a Certificate, Notice or Receipt in terms of the Act, or an item of these Regulations, shown in column 1 of the Table NLA 3, for the purpose listed in column 2 of that Table, the document [such Certificate, Notice] or Receipts must be in the prescribed manner and form of the annexure listed opposite that section number in column 3 of that Table, and must be produced subject to any conditions listed opposite that section number in column 4 of that Table and must be issued within 90 days from the date of receipt: **[provided that all the documents were submitted by the applicant upon application].”**



Amendment of Regulation 13 of the Regulations

4. Regulation 13 of the Regulations is hereby amended by –

(a) the substitution of sub-regulation (1) of the following sub-regulation:

“(1) A person who intends to be registered for the first time as a new registrant in terms of Section 11, must – **[file a fully completed Form NLA 1 on the last Friday of any month or if such a Friday is a public holiday, on the next Friday thereafter which is not a public holiday and such person]**

(a) complete Form NLA1 fully through the online case management system;

(b) satisfy all the filing instructions set out in the Form; [and]

(c) [have] attached [to it] all the documents required in terms of these Regulations; and

(d) file the completed Form.”.

(b) the substitution of sub-regulation (2) of the following sub-regulation:

“2. The applicant in addition to satisfying the requirements set out in Form NLA1, must – **[The application requirements for registration are not complete until the applicant has -]**

(a) pay[paid] the prescribed fees to the satisfaction of the National Liquor Authority and attach proof of payment with the application form.”.

(c) the substitution for paragraph (b) of sub-regulation 5 of the following paragraph:

“5(b) An application for registration in terms of sub-regulation (1) if made by a natural person, must be accompanied by –

(i) three months certified copy of an identity document, permit or visa of the applicant, issued in terms of the Immigration



Act, 2002 (Act No.13 of 2002) and the Refugees Act, 1998 (Act No. 130 of 1998), respectively ;

- (ii) a police clearance certificate or finger print clearance certificate which is valid for 12 months;
- (iii) **[a business zoning certificate for industrial purposes]** documentation, which must be to the satisfaction of National Liquor Authority as follows:
 - (aa) a zoning certificate suitable for manufacturing and distribution, or
 - (bb) a consent letter from the municipality where the premises are not suitable for manufacturing and distribution of liquor, which shall not be older than 12 months from the date of issue, or
 - (cc) a letter from tribal authorities which shall not be older than 12 months from date of issue, where the premises do not fall under the municipal jurisdiction;
- (iv) relevant compliance certificate issued by the South African Receiver of Revenue Service;
- (v) a BBB-EE compliance certificate in line with the BBB-EE codes of good practice;
- (vi) estimated or projected annual turnover;
- (vii) a proof of affiliation and proposed contributions made annually to an institution responsible for dealing with alcohol abuse; and
- (viii) any other documents, as may be requested in terms of the Act or by the National Liquor Authority.”.

(e) the insertion after sub-regulation 5(b) of the following sub-regulation:

“5(c) An application for registration in terms of sub-regulation (1) if made by a juristic person, including Trust, established in terms of the Trust Property Control Act, 1988 (Act No. 57 of 1988) must be accompanied by –



- (i) certified copies of identity documents of the directors, a permit or visa respectively, issued in terms of the Immigration Act, 2002 (Act No.13 of 2002) and the Refugees Act, 1998 (Act No. 130 of 1998), including registration certificates and copy of the share register;
- (ii) a police clearance certificate or finger print clearance certificate of the directors and persons with control over the applicant, which is valid for 12 months;
- (iii) documentation which must be to the satisfaction of National Liquor Authority as follows:
 - (aa) a zoning certificate suitable for manufacturing and distribution, or
 - (bb) a consent letter from the municipality where the premises are not suitable for manufacturing and distribution of liquor, which shall not be older than 12 months from the date of issue, or
 - (cc) a letter from tribal authorities which shall not be older than 12 months from date of issue, where the premises do not fall under the municipal jurisdiction;
- (iv) certified copy of registration document and shareholder certificate issued by Companies and Intellectual Property Commission established in terms of the Companies Act, 2008 (Act No. 71 of 2008) indicating the current status of the applicant;
- (v) a valid tax clearance certificate or relevant compliance certificate issued by the South African Receiver of Revenue Service;
- (vi) a BBB-EE compliance certificate in line with the BBB-EE codes of good practice;
- (vii) a proof of affiliation and proposed contributions made annually to an institution responsible for dealing with alcohol abuse;
- (viii) estimated or projected annual turnover; and



(ix) any other documents as may be requested in terms of the Act or as contemplated in sub-regulation 5(c)(iii).”

[(dd) valid proof that the prescribed application fee set out in Item 1

of Annexure 1 has been deposited into the bank account of the Department of Trade and Industry

(ee) **certified copy of identity document of the applicant if the applicant is a natural person, or certified copy of a passport if the applicant is a foreigner, trading business permit for foreign nationals and South African Police Services clearance certificate issued not more than three months from the date of application**

(ff) **If the applicant is a juristic person, valid copies of registration documents issued by Companies and Intellectual Property Commission established in terms of Companies Act, 2008 (Act 71 of 2008), or any other relevant registration authority, indicating the financial interest of all members, shareholders, partners or beneficiaries and certified copies of the identity documents of such members, shareholders, partners or beneficiaries as the case may be,**

(hh) **such other documents as may be specified on the application form and in the Act, or as may be requested by the National Liquor Authority**

(ii) **verification certificate issued in terms of the Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003).].”**



Amendment of Regulation 14 of the Regulations

4. Regulation 14 of the Regulations is hereby amended by –

(a) the substitution for sub-regulation (1) of the following sub-regulation:

“14(1) within 14_business days after receiving an application in terms of section 11, the National Liquor Authority **[must] may**–

- (a) reject any application filed with incomplete information, or non-payment;
- (b) proceed to consider a complete application for registration or **[issue a letter] request additional or corrected information; [or] and**
- (c) order an inspection of the premises to be conducted by an inspector within 30 days of receipt of application: provided that an inspection report **[must be] is** furnished within reasonable time **[, which shall not exceed a period of 30 days after inspection; or].**

(b) the substitution for sub-regulation (2) of the following sub-regulation:

- (2) The applicant must respond within 14 business days after receiving a **[letter referred to in sub-regulation (1)(b)] request in terms of sub-regulation (1)(b).**

Amendment of Regulation 15A of the Regulations, as amended by Regulation 15A of 2008

5. Regulation 15A of the Regulations is hereby amended by –

(a) the insertion after sub-regulation (1) of the following sub-regulation:



- “(1A) The information to be filed by the registrant in an annual information return, for the renewal of a registration must be accompanied by a valid -
- (i) a police clearance certificate or finger print clearance certificate which is valid for 12 months;
 - (ii) a valid tax clearance certificate or relevant compliance certificate issued by the South African Receiver of Revenue Service;
 - (iii) a BBB-EE compliance certificate in line with the BBB-EE codes of good practice;
 - (iv) a proof of affiliation and contributions made annually to an institution responsible for dealing with alcohol abuse;
 - (v) annual turnover and proof of annual turnover in the form of financial statement, letter signed by the director of the entity or a letter from an accountant, confirming the proof of annual turnover; and
 - (vi) any other documents as may be requested in terms of the Act or by the National Liquor Authority.”.

Amendment of Regulation 16 of the Regulations

6. Regulation 16 of the Regulations is hereby amended by -
- (a) the addition of sub-regulation (3) of the following:
 - “(3) an application in terms of sub-regulation (2) must be accompanied by the following documents:
 - (a) A registrant who proposes to relocate or alter the nature or conduct of its activities must apply to the National Liquor Authority by filing Form NLA 14, paying the prescribed fee and provide the following documents: a valid certified copy of
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 - (i) police clearance certificate or finger print clearance certificate which is valid for 12 months;



- (ii) a valid tax clearance certificate or relevant compliance certificate issued by the South African Receiver of Revenue Service;
 - (iii) BBB-EE compliance certificate in line with the BBB-EE codes of good practice;
 - (iv) a proof of affiliation and contributions made annually to an institution responsible for dealing with alcohol abuse; and
 - (v) an annual turnover and proof of annual turnover in the form of financial statement, letter signed by the director of the entity or a letter from an accountant confirming the proof of annual turnover; and
 - (vi) any other documents as may be requested in terms of the Act or by the National Liquor Authority.”.
- (b) the insertion after sub-regulation (4) of the following sub-regulation:
- “(5) A registrant wishing to register new premises must file NLA 1 and pay prescribed application fee.
 - “(6) The Minister or the National Liquor Authority shall issue a Certificate or Notice in terms of these Regulations within 90 days from the date of receipt of fully completed and compliant application.”.

Amendment of Regulation 21

7. Regulation 21 is hereby amended by -

- (a) the deletion of the following sub-regulation:

[“(1) Subject to conditions imposed by the National Liquor Authority a registrant may conduct business as a registered distributor during such trading hours as the National Liquor Authority may determine: Provided that the trading hours imposed



by the National Liquor Authority may not supersede the hours determined by a relevant municipality through a by-law or notice;”]

(b) the substitution for sub-regulation (2) for the following sub-regulation:

“(2) Subject to conditions imposed by the National Liquor Authority **[, and if the municipality or tribal authority has not determined the trading days and hours]** a registrant must conduct his business as a registered distributor on any day from Monday to Saturday between 06h00 and 18h00 and Sundays and Public holidays between 09h00 and 17h00.”

(c) the insertion of sub-regulation (3) of the following sub-regulation:

“(3) Manufacturing shall take place on daily basis for 24 hours.”

Amendment of Regulation 22 of the Regulations

8. Regulation 22 of the Regulations is hereby amended by -

(a) the substitution for sub-regulation (2) of the following sub-regulation:

“(2) The record referred to in sub-regulation (1) must be in a written or electronic form and must contain the following information:

- (a) name of the purchaser;
- (b) delivery address;
- (c) original valid liquor license or certified copy of not more than three months;
- (d) invoice numbers and dates of issue;
- (e) the kind and quantity of the liquor supplied; and
- (f) the purchase prices paid.”



- (b) the addition of sub-regulations (3) and (4) after Regulation 22(2)(e) as follows:

“(3) The records for distribution licence holders with a threshold of over 25 litres of liquor supply, must be kept for a period of five years from the date of sale.

(4) Display the original valid liquor registration certificate at the registered premises until the cancellation of the registration.”.

Transitional arrangements

- 9.** “The registrant who wishes to file any application or document required for the purposes of alterations, relocations, renewal or where the online case management system has not been opened for such application, shall upon coming into effect of these Regulations, when filing such application or document, file without using the online case management system for a period of five years or such earlier period as will be determined by the Minister by Notice in the Government Gazette.”.

Short title and commencement

- 10.** These Regulations shall be called National Liquor Amendment Regulations, 2020 and shall come into operation on the date of publication in the Government Gazette.



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