



## By Email

**For Attention: LIQUOR CONSULTANTS, LIQUOR APPLICANTS**

**RE: LLT CIRCULAR 01/2015**

Dear All,

The information below are shared to inform liquor consultants and applicants that applies for liquor licenses what the Liquor Licencing Tribunal (LLT) considers whilst applying their minds in the decision making process. Should all applicants, including consultants, adhere to and apply the requirements of the Liquor Licencing Tribunal, this would greatly reduce the request for additional information and consequently the time taken in finalising applications.

### **1. WHERE A FOREIGNER IS TO BECOME A LICENSEE/MANAGER:**

#### **The requirements of Section 35:**

A natural person as well as any legal entity like a company, close corporation, trust etc., must comply with this requirement. The onus is on the Applicant to satisfy the LLT on a balance of probabilities that Section 35 is not applicable to the Applicant. In order to do so, amongst others a police report is filed in respect of South African citizens. The same can however not be done for foreigners. In order to comply with the requirements of Section 35, all foreigners who wish to obtain a liquor licence, as well as those who have an legal entity, or intends to become a manager as envisaged in Section 52, must file a clearance report from their country of origin, stating what the criminal record, if any, is of such person.

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Similarly it is also necessary for the members of a close corporation, shareholders of a company etc. to provide proof from their country of origin that they are not disqualified in terms of Section 35 to hold a liquor licence. Any company, close corporation, trust or partnership of which the member, shareholder, trustee, beneficiary or partner is disqualified, also doesn't comply with Section 35 and is therefore *ipso facto* disqualified. The onus therefore remains on the members of the Applicant to show that they are not disqualified in terms of Section 35.

## **2. PROOF THAT SECTION 35 HAS BEEN COMPLIED WITH:**

### **Section 35 determines as follows:**

"If a person is disqualified in terms of subsection (1)(a) to (e) or (g), any company, close corporation or co-operative in which he or she has a shareholding, member's interest or a membership share, any trust of which he or she is a trustee or beneficiary and any partnership of which he or she is a partner, is similarly disqualified."

Due to practical consequences, the LLT is satisfied that where an application is made in terms of Section 36, shareholders in a company or members of a close corporation with less than 5% membership or shareholding, as the case may be, need not file proof that he/she complies with Section 35. If however application is made in terms of Section 51, where the percentage of shares/member's interest, held directly or indirectly by such person in a close corporation or private company, becomes 5 % or more, such person will have to file the necessary proof that he/she complies with Section 35.

## **3. TASTING WITH/WITHOUT COMPENSATION:**

No tasting for a fee will be allowed for any licence granted in terms of Section 33(1)(b). The only time when tasting may be allowed for a fee is when the licensee is a micro manufacturer in terms of Section 33(1)(a). Tasting for a fee must be specifically requested and allowed for by the LLT or P.O., as the case may be. Care should be taken by the industry that this indulgence is

not abused and the industry must please ensure that those who are allowed to taste at a fee, do so responsibly and that it doesn't become an excuse for a bar type situation. Should tasting be allowed for a retail food store, such tasting may only be conducted by a micro manufacturer licensed in terms of Section 33(1)(a).

#### **4. SECTION 34: GUIDELINES:**

Whilst it is not the responsibility of the LLT to give guidelines as to how an applicant should comply with his/her/its responsibility to satisfy the LLT on a balance of probabilities that there was compliance with Section 34, the LLT is prepared to give indications, yet these are not to be regarded as the only criteria, nor should the applicant take it for granted that if there was compliance with the indications given by the LLT, that the application must be granted or that there was compliance with the Section 34 requirements. Normal considerations that are used by the LLT are, depending on each case, and not limited to, the following:

##### **4.1 Section 33(1):**

The type of business to be conducted by the applicant.

##### **4.2 Section 34(1)(a):**

1. Would it be in the public interest to grant the licence;
2. What advantage would it be to the public if the licence is granted or refused;
3. What effect the business would have on the neighbourhood;

##### **4.3 Section 34(1)(b):**

1. Does the Applicant qualify in terms of Section 35;
2. Is the Applicant suitable to hold a liquor licence;
3. Did the Applicant provide proof that the Applicant or its member, shareholder, trustee, beneficiary or partner is not disqualified in terms of Section 35;

4. If any foreigner falls under 7 above, whether he/she has submitted a clearance certificate from his/her country of origin regarding his/her criminal history;
5. The experience of the Applicant/manager in the liquor industry;

#### **4.4 Section 34(1)(c):**

1. Are the premises completed;
2. Are the premises suitable or will it be suitable upon completion;
3. The plan submitted;
4. Do the colour photographs match the plan;
5. Safety of the premises;

#### **4.5 Section 34(1)(d):**

1. Does Applicant have the right of occupation;
2. If Applicant is the owner of the premises, a valid title deed;
3. If Applicant is the tenant, a valid lease agreement for the area as depicted on the plan;
4. If the premises consist of outside seating, whether such is covered by a valid lease agreement if applicable;
5. If a street/pavement is to be licensed, consent from the local authority;

#### **4.6 Section 34(1)(e)(i)-(v):**

1. The history of similar establishments on the premises;
2. If the premises are in or adjacent to a residential area, the nature of the closest properties;
3. The noise that will be caused by the business and possible unruly behaviour of patrons, also after closing time;
4. Would there be live entertainment;
5. Is there soundproofing or would same be necessary;
6. Will the windows and doors be kept shut/opened;

7. What would the effect of doors opening to allow patrons to enter or exit, have on the neighbouring area;
8. The distance between the premises and the institutions referred to in Section 34(1)(e)(i) to (v);
9. The direction the sound would travel;
10. What steps would be taken to curb the possible negative influence that the granting of a liquor licence would have on those referred to in Section 34(1)(e)(i) to (v) also with regard to people leaving the establishment;
11. Public open spaces in close proximity to the premises, especially with off consumption premises;
12. The control measures to be implemented by the Applicant;
13. Is the business close to or adjacent to a residential area;
14. What is the zoning of the property;
15. The area where the property is situated;
16. Crime and the safety of patrons visiting the proposed premises;
17. Traffic impact and parking.

#### **5. OFF CONSUMPTION INTERNET MARKETING:**

The licence number must be displayed on all webpages on the website;

#### **6. WHERE COMPANIES/ CLOSE CORPORATIONS ARE DEREGISTERED:**

When a close corporation or company has been deregistered, it is not allowed to trade until the deregistration has been reversed. Nothing prevents the licensee however to apply to have the deregistration lifted, but until it has been registered again, it is not allowed to trade. For the time the licensee has been deregistered, an application to have the licence suspended can be made to the LLT in terms of Sections 20(1)(d), (e), (f) or (g). The suspension of the licence can be lifted once the licensee can prove to the LLT that it has been registered to trade.

## **7. SEPARATION FOR ON AND OFF CONSUMPTION LICENSES: SECTION 33(1)(d):**

This decision was conveyed to the industry in June/July 2014 as Decision 2, which is hereby repeated for ease of reference:

### **DECISION 2:**

#### **2.1. LICENSES IN TERMS OF SECTION 33 (1) (d):**

- 2.1.1 The Applicant must clearly indicate on the plan submitted with the application, the area to be used for on-consumption purposes and the area to be used for off-consumption purposes, in two different colours.
- 2.1.2 Where a license for both on and off consumption is allowed, the area indicated on the plan as to where liquor will be sold for off-consumption purposes, must be capable of being separated from the rest of the area where liquor will be consumed for on consumption purposes. This doesn't mean that it has to be a separate room, it merely has to be capable of being made inaccessible to customers of the on consumption area after the hours for the sale of liquor for off consumption has expired. Adequate signage to make the public aware that liquor can't be sold after the trading hours allowed for off-consumption, must be displayed in a conspicuous place, black lettering on a white background, of at least 40 mm high and 20mm wide, indicating that no liquor may be sold for off-consumption purposes after the hours allowed for off-consumption use.
- 2.1.3 Control measures to prevent liquor from being sold after the trading hours allowed for the sale of liquor for off-consumption purposes, or before the hours allowed for on-consumption, must be implemented by the licensee at the point of sale.
- 2.1.4 Proof of 2.1.2 and 2.1.3 above must be provided to the LLT or, when a conditional approval was granted, before a final approval is granted.
- 2.1.5 The same storage area can be used to store liquor for off and on consumption purposes. The applicant must indicate on the plan that the storage place will be for both on and off consumption sales.

In order to provide clarity as to the type of demarcation required, the following methods of demarcation will be regarded as satisfactory, if appropriately implemented:

1. A lockable cupboard;
2. Movable balustrades;
3. Partitioning with a lockable door;
4. Any other means that will render the area where liquor for off consumption purposes are displayed, inaccessible outside the hours on which liquor may be sold.

#### **8. SAME HOURS OF TRADE: ON AND OFF CONSUMPTION:**

When the applicant wants to trade for on and off consumption purposes from the same premises, the separation between the on consumption area and off consumption area needs not be indicated, subject to the following:

1. The hours of trade for off consumption will not take place outside of the hours allowed for on consumption and the on consumption trade will not take place outside the hours allowed for off consumption. This means that trade for both on and off consumption may only take place between the shared hours as allowed for off consumption and on consumption.
2. Should the licensee wish to amend the hours of trade or the conditions imposed by the LLT, such amendment may only take place with the consent from the LLT and proof to the satisfaction of the LLT that there is the required separation between on and off consumption must be submitted together with such application.

Regards,



**ADVOCATE THYS GILIOME**

**CEO: WESTERN CAPE LIQUOR AUTHORITY**

**DATE: 16/02/2015**