

Summary on liquor legislation applicable to wine estates - 26 August 2009

1. Background

The Liquor Act 59 of 2003 came into effect on the 13th of August 2004. This Act regulates the large scale manufacturing and distribution of liquor and it provides for each province to draft its own liquor act to govern retail sales and micro-manufacturing of liquor in the province.

The Western Cape Liquor Act was approved by the Western Cape Parliament on 25 November 2008.

Only three sections of the Act (dealing with contraventions and penalties) have been put into effect to date.

The draft Regulations under the Western Cape Liquor Act (which prescribes the content of applications related to liquor licences and licence-and application fees) had been published for public comment but had not yet been finalised.

The City of Cape Town has published a **draft By-law on Liquor Trading Days and Hours** in terms of the powers conferred on municipalities in the Western Cape Liquor Act to regulate trading days and hours.

This by-law can only be put into effect once the Western Cape Liquor Act and its Regulations had been put into effect.

The committee responsible for drafting the Western Cape Liquor Act is currently working on a number of amendments to the Act including the provisions relating to trading days and trading hours.

These amendments will be published for public comment before the legislative process required to put them into effect will be followed.

Until such time as the Western Cape Liquor Act and its Regulations are brought into effect the Liquor Act 27 of 1989 (the old Act) continues to regulate micro-manufacturing and retail sales of liquor in the Western Cape.

2. The Liquor Act 27 of 1989 (the old Act)

2.1 Liquor licences

In terms of an exemption contained in this Act a wine producer may sell wine to licence holders without a licence if the wine had been manufactured from grapes grown on land owned or leased by him or from grapes bought in and if it was manufactured in a cellar which he lawfully occupies.

A liquor licence is required to sell wine to the public.

Separate licences are required for the sale of liquor for consumption **off** the premises i.e. in a tasting room or wine shop and the sale of liquor for consumption **on** the premises i.e. in a restaurant or function venue.

2.2 Leasing of cellar space

A producer may manufacture his wine in the cellar of another without requiring permission in terms of the Liquor Act (other than his liquor licence).

2.3 Tasting

A producer is not allowed to charge for wine tasting.

2.4 Supermarkets

Supermarkets are not allowed sell wine on Sundays. Supermarkets are also not allowed to sell wine with an alcohol content of more than 14%.

Supermarkets may not sell port or fortified wines.

3. The Western Cape Liquor Act

3.1 Liquor licences

The exemption which allows a producer to sell wine without a licence referred to above will no longer be available.

A producer will therefore require a licence not only for the sale of wine to the public but also to manufacture wine and to sell it to licence holders.

The only exception will be the exemption which will be available to garagiste wine makers who only make wine as a hobby for their own consumption.

They will be able to apply for an exemption from the requirement of having a liquor licence.

However if they intend to sell any of the wine manufactured they would have to apply for a liquor licence like any other wine producer.

The Act also makes provision for an on- and off-consumption licence.

3.2 Leasing of cellar space

A producer who wants to manufacture wine in the cellar of another would have to apply for permission to do so from the Liquor Board.

However the prescribed procedure is cumbersome and will take a considerable time and may therefore not be practical.

Representations will be submitted to the Committee responsible for drafting the amendments to the Act to scrap this requirement.

3.3 Tasting

Wine Estates will be allowed to charge for tasting.

3.4 Supermarkets

The Act allows for the sale of liquor on Sunday by liquor stores & supermarkets.

They will however not automatically obtain the right to do so once the Act comes into effect as the existing conditions applicable to licences will remain in place (in terms of the transitional provisions contained in the Act.)

Wine with an alcohol content up to 16,5% may be sold in supermarkets.

Supermarkets will also be allowed to sell fortified wine like port and sherry.

3.5 Sale of bottled wine at festivals

The Act provides for an application for a temporary licence for off-consumption liquor sales.

This will make it possible to obtain a temporary licence to sell wine by the bottle or case during wine festivals.

3.6 Application for liquor licences

The new Act contains additional requirements for liquor licence applications.

Applications will be advertised in newspapers, applicants will have to put up notices on the proposed premises and comments will be obtained from municipalities and ward counsellors.

In view of the above it is expected that the cost of applications will increase and that applications may take longer to be finalised.

The Liquor Board may require that licence holders or managers of businesses to be licenced undergo training i.r.o. the Act before the licence is issued.

3.7 Trading days & hours

In terms of the Act Municipalities will be empowered to determine trading days and trading hours for liquor sales.

The Act does however prescribe maximum hours which are from 09H00 to 18H00 for off-consumption sales and from 11H00 till 02H00 for on-consumption sales.

These hours can be extended to 20H00 for off-consumption and 04H00 for on-consumption sales (by making application to the Liquor Board)

The application for extended hours will however be costly as the application fee will be R1000, a further R2000 will have to be paid on approval and thereafter a further R4000 per year for the right to have extended hours.

These fees may however still be changed as they are contained in the Regulations under the Act which have not yet been finalised.

3.8 Offences

In terms of the Act persons (including passengers) are not allowed to drink in a vehicle in a public road and it is also an offence to have an open container of liquor in a vehicle.

It is also an offence to be drunk in any place to which the public has access.

4. Draft Regulations under the Western Cape Liquor Act

4.1 Temporary and special events licences

From the draft Regulations it appears that an application for a temporary liquor licence or special events licence will be a substantial application and will take a considerable time to be finalised.

Applications would therefore have to be lodged well in advance of the events for which they are required.

4.2 Leasing of cellar space

The application required to obtain permission to lease cellar space is also a substantial application and will take a considerable time to be finalised.

Representations will be submitted to the Committee responsible for amending the Act requesting it to scrap this requirement as it is considered impractical.

The application to extend trading times will also be a substantial application and the fees referred to above will apply.

4.3 Limit on sale & possession of liquor

The draft Regulations also prescribes a maximum quantity of liquor which may be sold to a person who is not a liquor licence holder in one day.

These are 30 litres of wine, 10 litres of spirits or 100 lt of beer.

In terms of the Act it is also an offence for a person who is not a licence holder to have more than the abovementioned amounts of liquor in its possession.

In view of the impracticality of these limits representations have been submitted for raising or doing away with these.

4.4 Application fees

In terms of the draft Regulations the application fees for applications for new licences or to amend existing licences will increase considerably.

Annual licence fees will also increase.

5. The City of Cape Town draft By-law on Liquor Trading Days and Hours

In terms of the draft By-law on Liquor Trading Days and Hours published by the City of Cape Town, wine estates will only be allowed to sell wine from their tasting rooms from 09H00 to 18H00.

Liquor may only be sold in function venues and restaurants on wine estate from 11H00 to 02H00.

The draft By-law does not make provision for the extension of the abovementioned hours.

6. Recommendations

In view of the changes referred to above liquor licence holders are advised to get their house in order as far as liquor licences are concerned.

6.1 Licence holder

Liquor licence holders should check whether the entity or company which holds the licence in fact sells the liquor.

If this has changed due to a restructuring of the business (for e.g for purposes of BEE) the necessary application to transfer the licence to the entity which in fact sells the liquor should be attended to.

The same applies if the shareholding in the company which holds the licence (or membership of the CC) has changed.

If so, an appropriate application must be submitted to the Liquor Board in this regard.

6.2 The licenced premises:

If the premises which had been licenced originally had been extended or altered an application to allow for liquor sales in the extended premises is required.

Alternatively, if an extension to an existing licence i.e. the addition of an picnic area or other venues to be used for functions is required, the appropriate application must be lodged.

6.3 Management:

Licence holders should also ensure that the person who was originally appointed as the responsible person under the licence is still available for this position, if not, an appropriate appointment in terms of the Liquor Act should be attended to.

6.4 Use:

The licence holder should also ensure that the licence which they hold provides for the use of the premises.

If the licence holder therefore holds a special licence (off-consumption) or a producer's licence for its tasting room the holder must apply for a restaurant licence or special licence (on-consumption) if it wishes to sell liquor for consumption in a restaurant, function venue or picnic area on the estate.



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