



# LAYING DOWN *the liquor law*

Sale of businesses to which Liquor Licenses attach

## Part 1: The conclusion of your agreement

If you operate a business which holds a liquor license, or you want to purchase such a business don't forget to make provision in your agreement for the transfer of the liquor license from the seller to the purchaser.

The liquor license is usually stipulated in the agreement as constituting part of the assets of the business, and its formal transfer should therefore be recorded as a matter of course. However, it is possible that the holder of the license is not actually the seller, but rather a member of the seller/close corporation or a director or shareholder. When you and your professional/s conducted a due diligence on the business you would have called upon the seller to furnish you with the liquor license, and recorded under "holder of the license" will be your transferor. If the seller and the transferor are different, you need to include in your agreement that the transferor agrees to the transfer and signs the agreement or an undertaking.

You can make your clause dealing with the transfer of the liquor license in the sale agreement a 'suspensive condition' (if the transfer of the license is not applied for/registered by a certain date, the sale agreement will lapse), or an undertaking by one of the parties to action. The problem with opting for the suspensive condition is that the transfer must be completed by a specific date (failing which the agreement lapses) and neither party has any control over the backlog of applications sitting with the National Liquor Authority or with our regional liquor boards. If the liquor license isn't transferred by the specified date and the sale agreement lapses, this could also cause problems in unravelling the agreement if the purchaser has already paid the seller or has run the business for a number of months. You will need to choose which option suits your circumstances.

The reasons why the transfer of a liquor license will be refused centre mainly on the capacity of a purchaser to hold the liquor license on transfer.

Generally speaking, persons who are disqualified from holding manufacturing and/or distribution liquor licenses in South Africa are minors (persons less than 18 years old); anyone convicted of contravening any law which governs the manufacture, distribution or sale of liquor in the five years preceding their application for a license; anyone who has been convicted of trading in drugs or an offence involving dishonesty; all unrehabilitated insolvents; persons of unsound minds; and entities where one of their directors or members or partners, etc.

Persons who are disqualified from holding micro-manufacturing liquor licenses (whereby you manufacture less than 100 million litres of beer; less than 50 million litres of traditional African beer; 4 million litres of wine; or 2 million litres of spirits per year) and retail liquor licenses, in the Eastern Cape are: minors; all unrehabilitated insolvents; persons of unsound minds; unregistered companies or CCs; trusts of which the majority of the trustees or beneficiaries are not SA citizens; and entities where one of their directors/members/partners/trustees/beneficiaries etc. Disqualified persons in these categories within the Gauteng province are more far-reaching: They are persons who have served a prison sentence without the option of a fine in the 10 years preceding their application for a liquor license (subject to certain qualifications); a person who has, in the five years preceding their application, been convicted of an offence in terms of the Liquor Acts of 1989 or 2003 (subject to certain qualifications); all un-rehabilitated insolvents; spouses of the latter three categories of persons; minors; liquor producers; agents of liquor producers; manufacturers of beer (other than those manufacturing beer under a micro-manufacturing license, or their agent); persons who have a financial interest in the business of producers or manufacturers of beer; or their agents; companies in which (controlling) shareholders thereof have a financial interest in the business of producers or manufacturers of beer or their agents; persons not

domiciled in South Africa; and entities where one of their controlling shareholders, directors, members, partners, beneficiaries or trustees.

Persons in the rest of the country, who are disqualified from applying for micro-manufacturing liquor licenses and retail liquor licenses, are: minors; persons who have served a prison sentence without the option of a fine in the 10 years preceding their application for their license; unrehabilitated insolvents; minors and the spouse of any of these persons.

If you are a seller of a business to which a liquor license relates, it would therefore be prudent to assess your purchaser's capacity to hold a liquor license, definitely prior to contracting with them, although preferably prior to permitting them access to your financial records.

Usually the responsibility for the transfer of the liquor license is placed in the hands of the purchaser, who also pays for the costs incurred to achieve the transfer. In exchange, the seller permits the purchaser to continue trading off the seller's existing liquor license, provided that the purchaser pays the annual renewal fees timeously. If you elect to go this route, sellers: please make sure that the relevant notice is filed with your local liquor board, informing them of the details of person who has taken responsibility for the management of the liquor at your premises.

*< In Part 2 we will deal with the practicalities of transferring your liquor license >*

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