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PART I—Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury, etc.

GOVERNMENT OF WEST BENGAL
Department of Excise

No. 128-EX/O/1A-2/10

Kolkata, the 11th February, 2010.

NOTIFICATION

In exercise of the powers conferred by sections 85 and 86 of the Bengal Excise Act, 1909 (Ben. Act V of 1909) and in supersession of this Department Notification No.2252-EX dated 18.11.2005, the Governor is pleased hereby to make, with immediate effect, the following rules:—

Rules

- 1. Short title.**— These rules shall be called the West Bengal Excise (Change in Management) Rules, 2009.
- 2. Application.**— These rules shall apply in case of change in management of all excise licences granted under the Bengal Excise Act, 1909 and rules framed thereunder, except for those licences which are settled by auction.
- 3. Definitions.**— In these rules, unless there is anything repugnant to the subject or context, the words and expressions used shall have the same meaning as respectively assigned to them in the Bengal Excise Act, 1909 and rules framed thereunder.
- 4. Procedure for application for change in management** — (1) The application for change in management of an excise license may be made to the Collector in whose jurisdiction the site is situated. No application for change in management of a license shall be considered unless it is accompanied by an appropriate receipted Treasury Challan showing payment of a non-refundable application fee similar to the one applicable for grant of a new excise license in the same category in the same local area.

Provided that no such change in management shall be considered by the Collector unless the licence has operated for at least five years at a stretch, except in circumstances where such change is required due to death, usual course of business in case of a Society or a Co-Operative Society or a Limited Company and/or such reasons which are beyond the control of the licensee(s) and which on enquiry are found to be justified by the Collector.

(2) A licence granted under the Bengal Excise Act, 1909, to a company, society, co-operative society or a firm shall stand determined on any change of membership of the company, society, co-operative society or in the partnership of the firm or in the management thereof, unless in the case of the company, prior approval of the state Government and in the case of a partnership firm, society or co-operative society, prior permission of the Collector and the approval of the Commissioner, to such change is obtained.

Subject to the above requirement, any change in management in a company registered under the Companies Act, 1956, or any change in the Board of Directors of the company - both private limited company, or public limited company, or membership in case of a Society registered under the Societies Act, or Co-operative Societies Act shall be brought to the notice of the Collector within a period of seven days, with application for regularization of the same along with a non-refundable application fee similar to the one applicable for grant of a new excise license of the same category in the same local area.

Provided further, that in cases of change in management from a firm / society / co-operative society to a company which is registered under the Companies Act, 1956, or from a private limited company to a public limited company and vice versa, or in case where there has been a takeover, or acquisition, or amalgamation, or merger of a private or public limited company holding an excise license by or with another company registered under the Companies Act, 1956, the management so changed, shall, subject to the requirement of prior approval, mentioned above, bring the matter to the notice of the Collector within a period of seven days, with application for regularization of the same along with a non-refundable application fee similar to the one applicable for grant of a new excise license of the same category in the same local area.

Provided also that in cases where changes occur without the prior approval of the State Government or without the prior permission of the Collector and the approval of the Excise Commissioner as the case may be. the Collector shall forthwith ask the society, or the co-operative society or the company to show cause within seven days as to why the licence should not be taken to be determined, consider the explanation if any and send his opinion and recommendation along with the explanation to the Excise Commissioner soon thereafter. The Excise Commissioner or the State Government as the case may be. shall thereupon review the case after granting the party an opportunity of being heard and pass orders which may be final.

(3) On receipt of the application, the Collector, under whose jurisdiction the site is situated, shall hold such enquiries as he may deem fit. In making such enquiries, the Collector shall consider whether the proposed transferee(s) is/are fit and eligible to hold an excise license and, whether the said change in management is necessary for the proper management of the licence.

(4) The Collector shall thereafter forward the proposal for change in management of the excise license to the Excise Commissioner, along with his opinion, except in those cases where the change in management occurs due to death of the licensee/joint licensees of a retail excise licence, run as a proprietary business, in which case the Collector shall be the competent authority to approve such change as per existing rules.

(5) The Excise Commissioner shall, after obtaining the proposal from the Collector, forward the same to the State Government, only in cases concerning the change in management in a Private Limited Company or a Public Limited Company, with his opinion if any. In all other cases, the Excise Commissioner shall be the competent authority to allow such change in management.

(6) When the decision of the Government, for the change in management is received by the Excise Commissioner, he shall convey the same to the concerned Collector for taking necessary action.

5. Payment of fees for change in management—(1) After getting approval of the State Government or the Excise Commissioner, as the case may be, the Collector shall allow change in management of a license after realizing one and a half times (1½ times) the initial grant fee similar to the one applicable for grant of a new excise license of the same category, of the same local area. The Collector shall also record such change in the concerned licence.

Provided that no initial grant fee of license shall be payable for change in management in case of—

- (a) death of an individual licensee or proprietor(s) of any proprietorship firm, when the new licensee(s) and / or proprietor(s) is/are selected from amongst the legal heir(s) or representative(s) of such deceased licensee or proprietor and when such newly selected licensee(s) or proprietor(s) is/are willing and otherwise eligible to hold the license:
- (b) death of one or more of the joint licensees, when such new licensee(s) is/are selected from amongst the legal heir(s) or representative(s) of such deceased joint licensees and when such newly selected licensee(s) is/are willing and otherwise eligible to hold the license along with the surviving licensee(s):
- (c) death of any member(s) of a Partnership firm, or a Co-operative Society registered under the West Bengal Co-operative Societies Act, 1953 or a Society registered under the West Bengal Societies Registration Act, 1961 and when the Partnership firm/ Society / Co-operative Society is newly re-constituted by way of selection from amongst the legal heir(s) or representative(s) of such deceased member(s) and the surviving members) and when such newly selected legal heir(s) or representative(s) is/are willing and otherwise eligible to hold the license along with the surviving member(s);
- (d) death of director(s) of a Private Limited Company.
- (e) death or change in management in the usual course of business of a public limited company, incorporated under the Companies Act, 1956.

(2) No initial grant fee shall be payable in case of Government Undertakings where the management is changed in the usual course of business.

6. Change of name :—An application for change of name and style of an establishment having excise license shall be accompanied by a non-refundable application fee similar to the amount applicable at the time of grant of a new excise license of the same category in the same local area. No initial grant fee shall be realized in such circumstances. Approval for such change of name and style shall be granted by the Collector in respect of a licence granted to an individual or a proprietorship firm. All other applications shall be sent to the Excise Commissioner, who shall be the competent authority for according such change in the name and style of a partnership firm or a society, or a co-operative society. Proposal for change in the name and style of a Company shall be sent to the Government. No such change shall be given effect, unless approved by the Government.

7. Overriding effect of rules.— These rules shall have effect notwithstanding anything to the contrary contained in any other rules or orders relating to transfer of license for the time being in force and all such rules or orders shall be subject to these rules.

8. Interpretation.— The power of interpreting these rules is reserved to the State Government.

By order of the Governor,

LAIMA CHOZAH,
Secretary to the Government of West Bengal.