

# **The Bihar Excise (Settlement of Licences for Retail Sale of Country/Spiced Country Liquor/Foreign Liquor/ Beer and Composite Liquor Shop) Rules, 2007**

BIHAR

India

## **The Bihar Excise (Settlement of Licences for Retail Sale of Country/Spiced Country Liquor/Foreign Liquor/ Beer and Composite Liquor Shop) Rules, 2007**

### **Rule**

### **THE-BIHAR-EXCISE-SETTLEMENT-OF-LICENCES-FOR-RETAIL-SALE- of 2007**

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The Bihar Excise (Settlement of Licences for Retail Sale of Country/Spiced Country Liquor/Foreign Liquor/ Beer and Composite Liquor Shop) Rules, 2007Published vide Notification Bihar Gazette (Extra-Ordinary) No. 2704, 7th June, 2007, dated 8.6.2007Registration, Excise and Prohibition Department (Excise and Prohibition) Notification No. 2704. - In exercise of the powers conferred under sub-section (1) and sub-section (3) of Section 89 of the Bihar Excise Act, 1915 [Act II of 1915] the Government of Bihar makes the following Rules superceding the previous rules, instructions and other provisions issued in this regard to the extent, those rules/ instructions/provisions are contrary to these Rules, for determination of the amount payable to the Government and its manner in the form of return for grant of exclusive privilege of retail sale of country liquor/spiced country liquor/foreign liquor/beer and composite liquor shop through Lottery system under Section 22 and Section 29 of the said Act.

### **1. Short title, extent and commencement.**

(1)These Rules may be called the Bihar Excise (settlement of Licences for Retail Sale of Country/Spiced Country Liquor, Foreign Liquor/Beer and Composite Liquor Shop) Rules, 2007.(2)It extend to the whole of the State of Bihar.(3)It shall come into force with effect from 1

## **2. Application of the Rules.**

- These Rules shall be applicable to the grant of licence for exclusive privilege of retail sale of country liquor/spiced country liquor, India made foreign liquor and composite liquor shop.

## **3. Definitions.**

- In these Rules,-(a)"Act" means the Bihar Excise Act, 1915.(b)"Lottery" means grant of licence of retail shops of country liquor/ spiced country liquor, foreign liquor and composite liquor shop publicly through draw of lottery amongst more than one applicant.(c)"Settlement Officer" means the Licensing Authority, or any other officer not below the rank of Excise Superintendent, authorised by licensing authority to invite the application in accordance with requisite proforma for grant of licence through draw of lottery.(d)"Applicant" means a person who has applied for the settlement of Excise shops.(e)"License Fee" means the fixed license fee of each of the retail shop as mentioned in sale notification.(f)"Composite Liquor Shop" composite liquor shop means such shop under which country liquor/spiced country liquor, foreign liquor and beer sold 'ON' and 'OFF' under one licence.(g)"Off" shop means, where consumption of liquor within the licenced premises is not permitted.(h)"On" shop means, where consumption of liquor within the licenced premises is permitted.(i)"Board" means the Board of Revenue, Bihar.(j)"Foreign Liquor" means as defined in Department Notification No. 470-F, dated 15th January, 1919.(k)"Excise Year" means the financial year beginning from 1st April and ending on 31st March of next calendar year.(l)"Licensing Authority" means the Collector of the District.(m)"Annual minimum guaranteed quantity" means the minimum quantity of guaranteed country liquor/spiced country liquor, foreign liquor and beer as determined by the Licensing Authority under general or special direction issued by the Commissioner of Excise and to be lifted from wholesale warehouse or any other place specified by the Commissioner of Excise during an excise year or part thereof for the purpose of retail sale by the licensee.(n)"Application Fee" means a non-refundable fee of application for the settlement of excise licence through draw of lottery.(o)"High Potential Zone" means such area which is commercially more important in this regard.(p)"Low Potential Zone" means the area which is commercially less important.

## **4. Settlement of the right to retail sale.**

(1)Subject to the provisions of these Rules, settlement of licence for retail sale of country liquor/spiced country liquor, foreign liquor/beer, wine and composite liquor shop shall be made under Section 29 read with Section 22 of the Act, through lottery system as prescribed hereinafter.(2)Settlement of the aforesaid licences shall be made for one excise year or part of the year. The licences may be renewed for further one succeeding year on such terms and conditions which shall be determined by Excise Commissioner. But licences shall not be granted, for more than two Excise years.

## **5. Power to determine minimum guaranteed quantity.**

- The Licensing Authority shall be competent to determine the minimum guaranteed quantity of each shop viz. country liquor/spiced country liquor, foreign liquor/beer and wine including composite liquor shop but such minimum guaranteed quantity of all the shops of a district shall not be less than the minimum guaranteed quantity determined by the Excise Commissioner for that district. The Excise Commissioner shall issue a guideline to all the Licensing Authority and the Licensing Authority shall be bound by the consideration to follow the guideline of Excise Commissioner.

## **6. Date of settlement.**

(1)The date of first settlement, for any period in different districts, shall be determined and notified by the Excise Commissioner after its approval as mentioned in Rule 7 of these Rules by the competent authority and shall be published in the leading newspapers/website of the department and thereafter communicated to the Collector, who shall get the same published in widely circulated newspaper, which shall include following particulars:-(i)date of settlement of country liquor/spiced country liquor, foreign liquor and the composite shop of liquor;(ii)time and place of settlement of licenses;(iii)any other particulars or requirements which may be deemed necessary;(iv)the last date, time and place of receiving the application with necessary documents and application for participating in the settlement.(2)Except for unavoidable circumstances, the Licensing Authority shall commence the settlement proceedings on the date or dates fixed and leave any unsettled shop for subsequent settlement. If it is necessary to defer the settlement on any account, the Licensing Authority shall immediately inform the Excise Commissioner with the deferred date giving reason for deferment.(3)The shops, which could not be settled on the first date of settlement, shall be settled, ordinarily, within ten days. After closing of the settlement on the first date, the Licensing Authority shall declare the date of re-settlement of balance shop, and shall notify and announce the programme:Provided that if any retail liquor shop not settled through lottery, the Bihar State Beverages Corporation Ltd. with the approval of Excise Commissioner, will manage to establish and run such shop.

## **7. Sale Notification.**

(1)Sale notification in excise Form 127 shall be published with the prior approval of Board of Revenue, ordinarily fifteen days before the date fixed for commencement of settlement, in which general conditions of settlement shall be mentioned, besides other facts. A copy of it shall be pasted for inspection at the collectorate or at the place where settlement is held.(2)Sale notification issued in excise Form 127 shall include general terms and conditions of the settlement, prescribed by the Excise Commissioner after approval of the Board of Revenue and those terms shall be deemed to be included in the conditions of licence. In special circumstances, the sale notification shall be published within less time than fifteen days also.(3)Descriptions of shops, their annual minimum guaranteed quantity and the licence fee of each shop shall be incorporated in the sale notification by the licensing authority.

## **8. Display of list of shops.**

- A list of shops to be settled under lottery system including minimum guaranteed quantity and annual license fee will be displayed in advance in the office of the Licensing Authority, and also at the time of settlement.

## **9. Qualifications for Applicant.**

- No person shall be allowed to participate in the process of settlement unless he;(a)produces solvency certificate in prescribed form, equivalent to reserve fee of one month of licence fee granted by the Circle Officer of the concerned circle where he resides or owns immovable property:Provided that if he does not produce the solvency certificate, such person may be allowed to participate in settlement if he deposits cash amount or produces Bank Draft or bank guarantee of the amount of 1/12 of the fixed annual licence fee in prescribed form by any scheduled bank and is valid for the period of settlement. The cash amount/Bank Draft so produced shall be returned to the unsuccessful participant immediately after the settlement is over. But in case of successful participant, it shall be adjusted against advance security, payable under Rule 15 of the Rules.(b)produces an affidavit duly affirmed in prescribed form, giving descriptions of his movable and immovable property and its status and annexed with the affidavit, the copies of document supporting his title of the property shown in the affidavit;(c)if he has outstanding arrear of excise revenue:Provided that if his name is found in the list of arrear holder of excise revenue, he may be allowed to participate in settlement only when he makes payment of his entire payable dues before the settlement process and gives an undertaking on stamp paper that if any further arrears are found due with him, as per calculation concerning the said district or any other district, he shall deposit the same within two weeks from the closure of the settlement or the commencement of the licence shop, whichever is earlier;(d)If he has been convicted by a criminal court for any offence and sentenced to imprisonment for one year or more;(e)if his licence has been cancelled during the last three years;(f)if he has been debarred from participating in settlement under the provisions of these rules;(g)unless he submits no dues certificate from the authorities of commercial taxes.Note. - In case of any doubt concerning the genuineness of the solvency certificate or any other certificate, the decision of the officer conducting the settlement shall be final.

## **10. Procedure regarding solvency certificate.**

(1)Any person who intends to participate in settlement, shall apply to the Circle Officer of that circle where he resides or owns immovable property, to grant a solvency certificate in prescribed form and he shall mention in his application the details of his movable and immovable property and all particulars of encumbrances thereon, if any. After careful examination and on being satisfied, the Circle Officer shall certify to the effect that the details furnished by the applicant are true or otherwise and if he is satisfied, then he shall prepare solvency certificate in prescribed form in triplicate. One copy will be given to the applicant, second copy will be forwarded by the Circle Officer to the District Collector concerned and third copy will be kept in the record of the Circle Office. If the applicant is a candidate in more than one district, he may obtain additional copy from the Circle Officer by applying for the same.(2)If the applicant is a resident of a place outside the

State of Bihar, the solvency certificate filed should be countersigned by the Collector of the district concerned.

## **11. Application for participation in settlement.**

- The person participating in settlement of one shop or more than one shop shall apply in prescribed application form, with their requisite application fee. The application fee will be not refundable and the proforma of application will be obtained from the office of the Assistant commissioner of Excise/Superintendent of Excise of any district of the State. After filling all the column carefully, the applicant will deposit the prescribed form with their requisite application fee in the office of the Assistant Commissioner of Excise/Superintendent of Excise of any district for any of the shops of the State individually for which he intends to participate within the prescribed date. For the shops situated outside of the district, requisite application fees shall be deposited in the form of Bank draft.

## **12. Procedure of settlement.**

(1)A list will be prepared of eligible applicants who have applied in prescribed application form. A shop-wise list of the applicant shall be prepared and published by the Licensing Authority before draw of lottery. Licensing Authority shall select the candidate for each shop through lottery. For each shop three candidates will be selected seriatem in order of preference and the shop shall be settled as per Rule 4 of these Rules and the direction issued by the Excise Commissioner.(2)Where number of applicants are less than three for a particular shop, Licensing Authority shall draw the lottery between available applicants. Notwithstanding, that an applicant may have been selected for any number of shop, but he shall be entitled to get settlement of maximum three shops in the one district. The shop shall be settled with the serial number one among the selected three candidates, but if he backs out from the settlement he shall be disqualified from settlement of any shop in the State. Such shop will be settled with the candidate selected at serial second and thereafter serial third in order of preference.(3)Settlement shall be started from the shop for which respectively least number of application has been received.(4)Application received in equal number for more than one shop, settlement shall be started from the shop having maximum minimum guaranteed quantity.(5)Settlement shall be conducted at the district headquarter, and shall be presided over by the Licensing Authority. If the Licensing Authority for unavoidable reason is unable to preside over the settlement, he may authorize any officer not below the rank of Additional Collector, Assistant Commissioner of Excise or Superintendent of Excise to preside over the settlement. All proceedings conducted shall be forwarded to the Licensing Authority for consideration by the said officer.

## **13. Hall Ticket .**

- No person, other than the officers on duty, can enter the place of settlement without producing hall ticket. The Assistant Commissioner of Excise or the Superintendent of Excise of the district as the case may be, shall issue hall ticket free of cost, to the applicant or in his absence, to his authorised representative.

#### **14. Reading over and explaining of the general conditions.**

- The general conditions concerning settlement through lottery shall be read over and explained to all persons present, before commencement of the settlement, so that the applicants may clearly understand the conditions on which they have to participate. The general conditions applicable to the retail sale and the special conditions of licence of each category shall also be read over and explained to the intending participants.

#### **15. Payment of Advance Security.**

- After the acceptance of settlement through lottery by the Licensing Authority, one twelfth portion of the annual licence fee shall be paid by the settlee as a security money and an equal amount i.e. 1/12th of the annual licence fee shall be deposited by the settlee as a advance licence fee which will be adjusted in the last month of the Excise Year:-(a)An amount equivalent to one twelfth portion of annual licence fee and the similar amount of security money in advance shall be deposited immediately in cash or in the form of Bank draft after the settlement.(b)The payable amount as per Rule 15(a) of these Rules shall be deposited immediately after the settlement or may be deposited within three days of settlement by the written order of the Licensing Authority.

#### **16. Default in advance security.**

- In case of failure to deposit the amount of advance security and the advance licence fee, as mentioned in Rule 15 of these Rules within the prescribed time, the settlement shall stand cancelled and the deposited amount, if any, shall be forfeited to the Government and shop shall be settled with the candidate at serial number two and three in descending order of the seriatem in the lottery.

#### **17. Payment of licence fee in monthly instalments.**

(1)The licence fee of each shop shall be fixed by Government for whole Excise Year. The one twelfth part of the annual license fee shall be deposited in each month in advance.(2)The monthly installment of licence fee, specified in the licence and determined under the above sub-rule (1), shall be deposited by the licensee in the Government treasury of the District by the first day of the month, which in any event must be deposited by 10th day of the month if the day is Holiday then next working day, failing which the license shall be cancelled and all deposited security money shall be forfeited and shop shall be settled to the applicant who was second in serial number and similarly to the third number. If, however, shop is not settled with any of the applicants, it shall be settled through a fresh process for remained of the term.

#### **18. Commencement of the period of licence.**

- A licence issued in favour of any selected applicant through draw of lottery shall be effective from 1st April of the Excise Year or part thereof:Provided that in Excise Year 2007-2008 it shall be effective from the date notified by the Excise Commissioner. Provided further that the

Commissioner, may for any other valid reason notify commencement of licence from any other date. The settlee shall be liable to pay the fix licence fee from the first day of licence period, even if the licence has been issued thereafter: Provided that if any shop is settled in the midst of the Excise Year the licence shall commence from the date mentioned in the licence.

## **19. Monthly division of annual minimum guaranteed quantity and its lifting.**

- The annual minimum guaranteed quantity of liquor for the whole Excise Year shall be divided in twelve equal instalments and the licensee shall have to lift one part thereof every month. If the licence is settled after the commencement of that year, the annual minimum guaranteed quantity and monthly division, accordingly, shall be determined proportionately. A licensee can lift minimum guaranteed quantity of any month till the last working day of that month. If on account of any unavoidable reason he does not lift the full quantity prescribed for the said month, the licensee may make request in writing to add the quantity, not lifted, in the monthly quota of the next month. In such a circumstance, the quantity on adding remainder of last month in the monthly quota of next month will be treated as monthly quota: Provided further that in no circumstance such monthly quota shall be more than double of the fixed upon of one month but the balance quota for the month of March shall not be lifted in the month of April. The monthly quantity not lifted till the closing of last working day of the month shall be forfeited until a special permission to lift the same in subsequent month is given by the Assistant Commissioner of Excise or Superintendent of Excise.

## **20. Lifting of liquor and their price.**

- (i) The licensee of country liquor/ spiced country liquor and foreign liquor will obtain pass from the Assistant Commissioner of Excise/Superintendent of Excise of the district for lifting the liquor from the godown of the wholesale. (ii) Additional license fee shall not be charged for additional lifting up to 15 per cent of the fixed minimum guaranteed quantity, but for lifting more than 15 per cent the additional license fee shall be charged @ 50 per cent of the fixed license fee. (iii) The licensee will have to pay price of the liquor to the whole seller as mentioned in sub-rule (i) above, the rate whereof shall be determined by the Board of Revenue/Government from time to time. (iv) The licensee shall not sell to the consumers at a rate more than the maximum retail price fixed by the Government, written on the bottle of liquor.

## **21. Refund of advance security amount.**

- The security amount referred in Rule 15 of these Rules shall be refunded after the settlement period, if all the dues and claims of the State Government with regard to settled shop have already been paid by the licensee.

## **22. Sale during the period of licence.**

- The licensee shall sell in retail the whole minimum guaranteed quantity of the liquor for the period of settlement before termination of the period of licence. After termination of the period of licence,

the disposal of any residue and unsold balance quantity shall be made as per the provisions contained in paragraph 117 of instructions of the Board of Revenue.

### **23. Invalidity of claim for delay in supply, closing of shop, non-opening of shop or reduction in hours of sale and closure due to election.**

(1)In case of late supply of liquor, the licensee shall not be entitled to put forward any claim for compensation or rebate.(2)In case the shops remain closed or could not be opened due to any reason the licensee shall not be entitled to put forward any claim for rebate or refund of licence fee. Likewise, the licensee shall not be entitled to make any claim for any kind of rebate in the license fee for reduction in sale hour, closure, due to election etc.

### **24.**

(1)On violation of the provisions of these Rules, conditions of license or conditions of sale notification or general conditions applicable to vend licenses by the licensee in any manner, action will be taken under Section 42 of the Bihar Excise Act.(2)If a licence is cancelled under Rule 24(1) of these Rules the licence fee, security amount or any other amount deposited by the licensee, shall be forfeited in favour of the Government and the licensee shall not be entitled to claim for any kind of compensation or refund.

### **25.**

The licensee shall be bound to comply the general or special instructions issued from time to time by the Commissioner of Excise or the licensing authority.

### **26. Repeal.**

- (i) After coming into force of these Rules all previous Rules, appertaining to settlement of retail shop of all kind of liquor including wine shall stand repealed and all settlement of retail shop shall be processed under these Rules or orders/instruction issued under these Rules.(ii)In order to give fullest effect to these Rules, it shall be open to Excise Commissioner to issue such direction/order after obtaining approval of member, Board of Revenue, as he may deem fit and proper, provided no such direction/ order shall be issued in contravention of these Rule.