

THE SPIRITS CONTROL ACT

ARRANGEMENT OF SECTIONS

1. Short title.
2. Interpretation.
3. Establishment of Spirits Control Board, its powers and duties.
4. Who shall be approved manufacturers.
5. Further parties.
6. Minister to issue licences to approved manufacturers.
7. Limitation of manufacture.
8. Offences.
9. Forfeiture on contravention.
10. Minister may fix maximum retail price.
11. Regulations.
12. Modifications and alterations of agreements and new agreements to be approved by Minister.
13. Procedure on application for approval of Minister.
14. Unfair discrimination prohibited.
15. Power of Board to hear and determine complaints.
16. Appeals from Board to a Judge in Chambers.
17. Prevailing customs, etc., to be recognized.
18. Duty and powers of Board to make enquiries and report.
19. Powers of Board in any proceeding.
20. Force of order of Board and Judge.
21. Trial of offences.

SCHEDULE

THE SPIRITS CONTROL ACT

[31st December, 1934.]

Cap. 365.
Law
47 of 1957.
Act
12 of 1985
Sch.

Short title.

Interpreta-
tion.

12/1985
Sch.

1. This Act may be cited as the Spirits Control Act.

2. In this Act—

“denatured alcohol” means any spirits which, by the addition thereto of a denaturant approved by the Commissioner of Customs, has been rendered unfit for use as a beverage and incapable of being converted to the purposes of spirits;

“retail price” means the price of any spirits sold or to be sold under a town retail licence, a town-off licence, a village retail licence, a tavern licence, a hotel licence, an occasional or special licence, or a special hotel licence granted under and by virtue of the Spirit Licence Act;

“spirits” means distilled spirits of every kind distilled in this Island, including rum and alcohol as defined in the Excise Duty Act, but not including denatured alcohol;

“Spirits Pool Agreement” means—

- (a) a certain agreement dated the tenth day of March nineteen hundred and thirty-two and made between the Jamaica Sugar and Rum Manufacturers Limited a Company duly incorporated under the Laws of this Island (hereinafter called "the Company") and certain sugar manufacturers making provision for the control and regulation of the manufacture of spirits by the said sugar manufacturers and for the sale there-

SPIRITS CONTROL

of by the Company (a true copy whereof has been deposited on the tenth day of November nineteen hundred and thirty-four with the Colonial Secretary for Jamaica) and any modification or alteration of the said agreement agreed upon by such of the sugar manufacturers who may have executed or otherwise assented to the said agreement and who shall own not less than three-quarters in number of the sugar factories owned for the time being by the sugar manufacturers who may have executed or otherwise assented to the said agreement;

- (b) any agreement with the Company which shall be executed or otherwise assented to by sugar manufacturers who for the time being shall own not less than two-thirds in number of the sugar factories for the time being existing in this Island making provision for the control and/or regulation and/or restriction of the manufacture and/or sale of spirits manufactured or to be manufactured by such sugar manufacturers;

47/1957
S. 2 (b)

“sugar factory” means all buildings, machinery and plant erected and in use as one unit for the purpose of manufacturing sugar in this Island by the vacuum pan process;

“sugar manufacturer” means any person engaged in this Island in the manufacture of sugar by the vacuum pan process.

3.—(1) There shall be established a Board to be called “The Spirits Control Board” (in this Act referred to as the Board) comprised of not less than seven members for the purpose of carrying out the provisions of this Act. One member of the Board shall be a spirits manufacturer or a representative of spirits manufacturers and one other member shall be a spirits dealer not concerned with the manufacture of spirits.

Establishment of Spirits Control Board, its powers and duties.

(2) The members and Chairman of the Board shall be appointed by the Minister and the Minister may from time to time define the powers and duties of the Board.

(3) The Minister may fill any vacancy on the Board caused by the death, resignation, illness, absence from the Island, or inability to act, of any member thereof or in any other manner whatsoever, and may revoke the appointment of any member of the Board.

(4) Notwithstanding any temporary vacancy or vacancies in the body of members composing the Board the same shall be deemed to be fully constituted for the purposes of this Act.

(5) Five members including the Chairman or Acting Chairman shall form a quorum for the transaction of business and may do anything that the Board may do under this Act.

(6) The Chairman shall have the right to vote on any question and in the event of the votes being equal he shall also have a casting vote and the decision of the majority of the members present and voting shall prevail:

Provided that no member of the Board shall take part in the deliberations of the Board, on any question in which his individual interests, as distinct from the interests of the industry generally, are directly concerned. The Chairman of the Board shall have full power to call meet-

ings of the Board and shall be entitled to attend meetings of the Board of the Company mentioned in this Act, and shall have the right of access to all contracts, records and transactions of the Company, but he shall not be a member of the Board of the said Company, or be entitled to vote at any meeting of the Board of the said Company.

(7) In addition to any express powers and duties of the Board that may be defined as aforesaid it shall be lawful for the Board—

12/1985
Sch.

- (a) to demand and obtain from the Commissioner of Customs or any officer of Customs such information either written or verbal as the Board may from time to time deem necessary to enable it to exercise its powers or perform its duties under this Act;
- (b) from time to time to advise the Minister as to the maximum retail prices which it is advisable for him to fix for the various grades of spirits in Jamaica;
- (c) to perform such duties and exercise such powers as may from time to time be assigned to it or conferred on it by the Minister for fully carrying into effect the provisions of this Act.

Who shall be
approved
manufac-
turers.

4. For the purposes of this Act the following persons shall be or be deemed to be “approved manufacturers”—

47/1957
S. 3 (a).
Schedule.

- (a) All the persons mentioned in the Schedule:

Provided that so soon as any one of such persons shall cease to be subject to the obligations of the agreement or agreements now in force relating to the restriction and/or regulation and/or sale of the spirits manufactured or to be manufactured by such person such person shall subject to the further provisions of this section immediately cease to be or be deemed to be an “approved manufacturer”.

(b) Any sugar manufacturer in this Island so long as such sugar manufacturer shall be subject to the obligations of any Spirits Pool Agreement.

5. Any person who is a sugar manufacturer or who shall become a sugar manufacturer as is defined in this Act shall be entitled to become a party to any Spirits Pool Agreement.

Further parties.

6. The Minister shall grant to each approved manufacturer other than the persons mentioned in the Schedule a licence to manufacture (subject to the provisions of this Act and of any enactment relating to the manufacture of spirits in this Island) spirits in this Island and no such approved manufacturer shall manufacture any spirits in this Island unless such approved manufacturer shall be the holder of a licence granted as aforesaid. If and when any such approved manufacturer to whom a licence shall have been granted as aforesaid shall cease to be an approved manufacturer as provided in section 4 the licence granted to such approved manufacturer shall be deemed immediately to be revoked and rendered null and void.

Minister to issue licences to approved manufacturers.
47/1957
S. 4.
Schedule.

7.—(1) Except as is otherwise provided in subsection (2), no spirits shall be manufactured in this Island, during the continuance of any Spirits Pool Agreement, by any person other than an approved manufacturer, or in breach of the terms of any Spirits Pool Agreement.

Limitation of manufacture.

47/1957
S. 5.

(2) Notwithstanding anything contained in this section, where application is made to him in writing signed by a majority of the sugar factory owners in the

Island, the Minister, if he thinks fit, may grant a special licence authorizing the person named in the licence to manufacture spirits, or any specified liquid which would be included in the definition of spirits under this Act, and every such licence shall be granted subject to such terms and conditions as the Minister in any case may attach thereto.

For the purposes of this section the expression "a majority of the sugar factory owners in the Island" means at least two-thirds of the total number of such sugar factory owners, at the time when an application is made under this section.

Offences.

8.—(1) Any person who shall by himself, his servants or agents manufacture or aid or abet or be concerned in the manufacture in this Island of any spirits contrary to the provisions of this Act shall be guilty of an offence against this Act.

(2) Every person charged with an offence under this section shall be liable on summary conviction by a Resident Magistrate to a penalty not exceeding two hundred dollars for the first offence and not exceeding four hundred dollars for every subsequent offence and in default of payment of any such penalty such person (or in the case of a Company, the Manager, or agent in Jamaica of such Company) shall be liable to imprisonment with or without hard labour for a period not exceeding sixty days for the first offence and not exceeding six months for any subsequent offence.

(3) In any proceedings under this section after it shall have been proved that any person shall by himself, his servants or agents have manufactured or aided or abetted or been concerned in the manufacture in this Island of any spirits the onus of proof that the spirits so manu-

factured have been fully manufactured shall be upon the person charged.

9. Any spirits manufactured in this Island contrary to the provisions of this Act may be seized and forfeited in such manner as any spirits liable to seizure and forfeiture under the Excise Duty Act may be seized and forfeited:

Forfeiture
on contra-
vention.

Provided that when any such spirits shall be seized and forfeited the same shall be destroyed or otherwise disposed of as the Minister may direct.

10.—(1) It shall be lawful for the Minister, if he think fit, from time to time by order to be published in the *Gazette* to fix the maximum retail prices in Jamaica for any or all of the various grades of spirits and the Minister may by like order vary or revoke any such order previously made.

Minister
may fix
maximum
retail price.

(2) Any person selling spirits in excess of such maximum price so fixed as aforesaid shall on conviction be liable to a penalty not exceeding two hundred dollars for each such offence and in default of payment of the penalty imposed to imprisonment with or without hard labour for a period not exceeding three months.

11.—(1) The Minister may from time to time make regulations for the more effective carrying out of the provisions of this Act and in particular, but without prejudice to the generality of the foregoing provision, in relation to any or all of the following matters—

Regulations.

- (a) for controlling the Board;
- (b) for regulating the procedure of the Board in all matters to be brought before the Board in pursuance of the provisions of this Act;

- (c) for ensuring the recording and carrying out of any decision of the Board and of a Judge in Chambers;
- (d) for the proper service of all necessary notices and process;
- (e) for the fixing of all costs and fees in relation to any proceedings under this Act.

(2) Such regulations shall not have any force or effect until publication thereof in the *Gazette* and shall, as and from the date of such publication, have the force of law.

Modifica-
tions and
alterations
of agree-
ments and
new agree-
ments to be
approved by
Minister.
47/1957
S. 6 (a) (b)
(c) and (d).

12.—(1) From and after the 18th day of February, 1937, no modification or alteration of the Agreement in this Act defined as the Spirits Pool Agreement, and no agreement to be hereafter made shall be deemed to form part of, or be a Spirits Pool Agreement within the meaning and for the purposes of this Act unless such modification, alteration or agreement shall have been approved by the Minister.

47/1957
S. 6 (e)
& (f).

(2) At any time prior to (but not earlier than one year before) the termination of any separate Spirits Pool Agreement made as hereinafter provided, the Company shall, with the approval of the Minister, make a separate Spirits Pool Agreement with any of the parties to the expiring separate Spirits Pool Agreement with such terms as to the Company may seem just and reasonable, subject to the right of any of the said parties to appeal to the Minister from any refusal of the Company to accord to any such party terms that may be just and reasonable.

(3) Upon an appeal as aforesaid the Minister shall refer such appeal to the Board for its consideration and advice, and the Board shall hold an enquiry and shall investigate and consider any such appeal, and shall hear and consider all evidence and matters submitted by or on behalf of the appellant and the Company and any person

claiming to be interested in or liable to be injuriously affected thereby, and shall report to the Minister in relation to such appeal.

(4) The Minister in considering such report shall not be bound by anything contained therein, and may settle and approve of a Spirits Pool Agreement with such terms as shall in his discretion be just and reasonable, and such last mentioned Agreement shall be deemed to be a Spirits Pool Agreement within the meaning and for the purposes of this Act, other than section 5, and shall be binding on the Company as a Spirits Pool Agreement notwithstanding that such Agreement has not been executed or otherwise assented to in accordance with the provisions of paragraph (b) of the definition of "Spirits Pool Agreement" in section 2.

13.—(1) Upon any application to the Minister for approval of any modification or alteration of any existing agreement or of any new agreement as mentioned in section 12 the Minister shall refer such application to the Board for its consideration and advice.

Procedure
on applica-
tion for
approval of
Minister.

Every such application shall be advertised in such manner as may be prescribed in the *Gazette* and at least three times in a daily newspaper circulating in Jamaica.

(2) Any person (hereinafter referred to as "an objector") claiming to be interested in, or liable to be injuriously affected by, any such modification, alteration or new agreement, may within 14 days from the last of such advertisements lodge with the Board an objection and shall forthwith serve a copy thereof on the Applicant. Such objection shall be in writing and shall set out the grounds upon which the objector claims to be interested in or liable to be injuriously affected by such modification, alteration or new agreement, and shall also set out the grounds upon which the objector will rely.

SPIRITS CONTROL

(3) The Board shall thereupon hold an inquiry and shall investigate and consider any such application and any objection thereto, and shall hear and consider all evidence and matters submitted by, or on behalf of the applicant, and any objector and shall report to the Minister in relation to such application. The Minister in approving or disapproving of any such modification, alteration or new agreement as aforesaid shall not be bound by any advice contained in any such report and may make such order as may seem proper.

(4) For the purposes of this section "prescribed" means prescribed by regulations to be made by the Minister in pursuance of this Act.

Unfair discrimination prohibited.

14. The Company shall not in effecting sales or making executory contracts of sale of any spirits manufactured under and in pursuance of any Spirits Pool Agreement (hereinafter referred to as "pool spirits") unfairly discriminate between individual buyers of pool spirits.

Power of Board to hear and determine complaints.

15.—(1) Whenever any person shall contend that the Company has in any particular matter in relation to the sale of pool spirits unfairly discriminated against him such person may lodge a complaint as to such matter with the Board and the Board shall thereupon summon the Company to answer to such complaint.

(2) Whenever the Company shall contend that any person has committed any breach of any arrangement by such person with the Company in relation to the sale of any pool spirits the Company may lodge a complaint as to such matter with the Board and the Board shall thereupon summon such person to answer to such complaint.

(3) All such complaints shall be in writing and shall set out concisely the facts complained of and the grounds upon which the complainant will rely and a copy of such complaint shall be attached to any summons to be issued by the Board to the Company or other person in pursuance of this section.

(4) The Board shall thereafter have power to and shall hear and consider the subject matter of such complaint and any answer thereto and all evidence and matters submitted by or on behalf of the complainant and the other party and may after such hearing make such order in the premises as to the Board shall seem fit.

16.—(1) Any party aggrieved by any order made by the Board pursuant to the provisions of section 15 may appeal to a Judge in Chambers who shall hear and determine such appeal and make such order as to such Judge may seem fit.

Appeals
from Board
to a Judge
in
Chambers.

(2) Any such order made by a Judge in Chambers shall be final and binding on all parties to the proceeding.

(3) Rules of court may be made prescribing the notices to be given, the parties to be served, and the procedure to be followed, in relation to any appeal under this section.

17. In considering the subject matter of any such complaint as aforesaid and in making any order thereon the Board, and on appeal the Judge, shall have due regard to any custom, practice, matter or thing relating to the manufacture of spirits and to the sale thereof prevailing at the 18th day of February, 1937, or from time to time prevailing in the industry:

Prevailing
customs,
etc., to be
recognized.

Provided always that the Board may only consider any custom, practice, matter or thing not involving an unfair discrimination between individual buyers.

Duty and powers of Board to make enquiries and report.

18. The Board may from time to time, and shall, on the direction of the Minister or on the requisition of at least two members of the Board enquire into any matter or thing in relation to the manufacture of spirits in this Island, and to the sale thereof by the Company or by any other person whomsoever, and report to the Minister upon any such enquiry. For the purpose of any such enquiry the Board shall have all the powers of the Supreme Court to summon witnesses at such enquiry and to compel the production of any document.

Powers of Board in any proceeding.

19. In respect of any question or matter coming before the Board in pursuance of the provisions of sections 13 and 15 the Board shall have all the powers of the Supreme Court to summon parties and witnesses and to compel the production of any document and shall have power to make such order as it deems fit in regard to the payment of the costs of any proceedings before it by any of the parties to such proceedings.

Force of order of Board and of Judge.

20.—(1) An order of the Board and any decision of the Board other than a decision contained in a report to the Minister in pursuance of the provisions of section 13 shall have the force of a judgment of a Resident Magistrate's Court in matters within the Court's jurisdiction and any order or decision made by the Judge on any Appeal in pursuance of section 16 shall have the force of a judgment of the Supreme Court.

(2) Any action or other proceeding may be brought in any competent court by any person who is aggrieved by failure to carry out any such order or decision of the

Board or of the Judge and in such case the court shall enforce such order or decision in like manner as judgments of such court are enforced.

21. Any offence under this Act shall be tried summarily before a Resident Magistrate and the offence shall be deemed to have been committed in any parish in which the offender resides or carries on business and the complaint or information relating to any such offence may be made or laid at any time within six months from the time when the matter of such complaint or information arose. ^{Trial of offences.}

SPIRITS CONTROL

47/1957
S. 7.

Member	SCHEDULE Factory	(Section 4) Postal Address
Jamaica Sugar Estates Ltd. Seaforth Sugar & Rum Ltd. Gray's Inn (Jamaica)	Duckenfield Serge Island	Golden Grove Seaforth
Central Factory Ltd. Richmond-Llandoverly Ltd. Sheriff & Company (Jamaica) Ltd.	Gray's Inn Central Richmond-Llandoverly Long Pond	Annotto Bay Laughlands Clarks Town
Vale Royal Estates Ltd. Barnett Ltd. Rose Hall Ltd. Hampden Estates Ltd. The West Indies Sugar Co., Ltd.	Vale Royal Catherine Hall Rose Hall Hampden	Duncans Montego Bay Little River Hampden
The West Indies Sugar Co., Ltd.	Frome	Frome
J. Wray & Nephew Ltd. Holland Estate Ltd. Sevens Limited New Yarmouth Ltd. Caymanas Estates Ltd. Worthy Park Ltd. Innswood Estate Ltd. Bernard Lodge Sugar Company United Estates Ltd.	Monymusk Appleton Holland Sevens New Yarmouth Caymanas Worthy Park Innswood Bernard Lodge Bybrook	Lionel Town Siloah Middle Quarters May Pen Sandy Gully Spanish Town Ewarton Spanish Town Spanish Town Bog Walk