

Chapter 305.
Distillation Act 1955.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 305.

Distillation Act 1955.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Distillation Act 1955,

Being an Act relating to distillation.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**back**” means a vessel in which wort is deposited for the purposes of fermentation;

“**by authority**” means by the authority of an officer doing duty in the matter in relation to which the expression is used;

“**Collector**” means the Commissioner General of Internal Revenue or an officer doing duty in the matter in relation to which the expression is used;

¹“**distiller**” means a person who holds a licence under Section 10;

“**distillery**” means the licensed premises of a distiller;

²“**ethanol**” means industrial ethyl alcohol of a strength not less than 95% alcohol by volume and includes denatured ethanol;

“**feints**” means spirits received into a feints receiver;

“**Government warehouse**” means a Government warehouse appointed under Section 71 of the *Customs Act 1951*;

¹ Section 1 (definition of “Collector”) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

² Section 1 (definition of “ethanol”) inserted by *Distillation (Amendment) Act 1995* (No. 33 of 1995), s1(a).

“**illicit spirits**” means spirits distilled, moved, altered, or removed from a distillery or interfered with in contravention of this Act;

“**illicit still**” means a still made, imported, used, set up or in the possession or custody of a person without lawful authority;

“**low wines**” means spirits of the first extraction received into the low wines receiver;

“**material store**” means a store in distillery for the storage of material for distillation;

“**methyrate**” means to mix spirits with a prescribed substance in the prescribed quantity and in the prescribed manner;

³“**methyated spirits**” means methyated spirits that before methylation is of a strength of not less than 95% alcohol by volume;

“**officer**” means an officer within the meaning of the *Excise Act 1956*;

“**operations**” includes all stages, processes or operations in the course of or in connection with the distillation of spirits;

“**permission**” means the written permission of the Collector;

⁴“**potable alcohol**” means industrial ethyl alcohol of a strength not more than 50% alcohol by volume;

“**plant**” includes machinery, apparatus, vessels, utensils, fittings and plant of all kinds;

⁵“**power alcohol**” includes methyated spirits to which is added 2% to 20% benzene and denatured alcohol;

“**the regulations**” means any regulations made under this Act;

“**spent wash**” means the liquor that remains after spirits have been extracted by distillation;

“**spirits**” includes liquor—

(a) of a like character and description to liquor on which under the name of spirits any duty of Customs is payable; and

(b) on which in the name of spirits or of power alcohol any excise is imposed by an Act, and whether distilled or made or in any stage of distillation or making;

(c)⁶ ethanol and potable alcohol;

“**spirits store**” means a store for the storing of spirits;

³ Section 1 (definition of “methyated spirits”) amended by *Distillation (Amendment) Act 1995* (No. 33 of 1995), s1(b).

⁴ Section 1 (definition of “potable alcohol”) inserted by *Distillation (Amendment) Act 1995* (No. 33 of 1995), s1(c).

⁵ Section 1 (definition of “power alcohol”) inserted by *Distillation (Amendment) Act 1995* (No. 33 of 1995), s1(d).

⁶ Section 1 (definition of “spirits” paragraph (c)) inserted by *Distillation (Amendment) Act 1995* (No. 33 of 1995), s1(e).

“**spirits warehouse**” means a warehouse in distillery on a distiller’s premises in which spirits may be warehoused without payment of duty;

“**still**” means—

- (a) an apparatus for or capable of distilling spirits; or
- (b) a part of such an apparatus; or
- (c) an apparatus connected with, or used in connection with, distilling;

“**still house**” means the house or room in a distillery where distillation is carried on;

“**this Act**” includes the regulations;

“**wash**” means the liquor from mashed material after it has commenced to ferment and before it has been distilled;

“**wort**” means the liquor from mashed material before it has commenced to ferment.

1A. EXEMPTIONS.

⁷(1) The Minister may, by notice in the National Gazette, exempt—

- (a) a person; or
- (b) a class of persons,

from all or any of the provisions of this Act.

(2) An exemption under Subsection (1) may be subject to conditions specified in the notice.

2. INCORPORATION OF PROVISIONS OF THE EXCISE ACT.

(1) Except so far as they are inconsistent with this Act, the following provisions of the *Excise Act 1956* are incorporated and shall be read as one with this Act:—

- (a) Section 4 (*time for compliance with provisions relating to registration and licences*); and
- (b) Part II (*administration*); and
- (c) Section 24 (*surrender of licence for larger licence*); and
- (d) Section 27 (*reduced duty on goods for manufacture*); and
- (e) Section 38 (*Customs control*); and
- (f) Section 39(1) (*payment of duty*); and
- (fa)⁸ Part IV (producers and dealers); and

⁷ Section 1A inserted by *Distillation (Amendment) Act 1996* (No. 61 of 1996), s1.

- (g) Part VII (*remissions, refunds and drawbacks*); and
- (h) Part VIII (*officers of Excise*); and
- (i) Part IX (*penal provisions*); and
- (j) Part X (*Excise prosecutions*); and
- (k) Part XI (*disputes as to duty*); and
- (l) Part XII (*settlement of disputes by the Comptroller*); and
- (m) Part XIII (*miscellaneous*).

⁸ Section 2(1)(fa) inserted by *Distillation (Amendment) Act 1995* (No. 33 of 1995), s2.

PART II. – STILLS.**3. MAKING, SELLING, IMPORTING, ETC., STILLS.**

⁹A person who, without the permission of the Commissioner General of Internal Revenue—

- (a) makes or commences to make a still; or
- (b) moves or sets up or erects a still; or
- (c) sells or purchases a still by itself or with other property or as part of any premises; or
- (d) imports a still,

is guilty of an offence.

Penalty: ¹⁰A fine not exceeding K1,000.00.

4. USE OF STILLS.

¹¹A still may be used for a purpose other than the distillation of spirits if the owner has—

- (a)¹² given written notice to the Commissioner General of Internal Revenue specifying—
 - (i) the size or capacity of the still; and
 - (ii) the purpose for which the still is used or intended to be used; and
- (b) obtained the sanction of the Minister; and
- (c)¹³ given security to the Commissioner General of Internal Revenue in such sum as the Commissioner General of Internal Revenue requires, not exceeding K200.00, that the still will not be used for distilling spirits.

5. SMALL STILLS.

¹⁴Sections 3 and 4 do not apply to a still of a capacity not exceeding 4.5 litres if, prior to using the still, the owner gives written notice to the Commissioner General of Internal Revenue specifying the purpose for which, and the place at which, the still is intended to be used.

⁹ Section 3 amended by No. 18 of 1982, Sched. 5; amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

¹⁰ Section 3 Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

¹¹ Section 4 amended by No. 25 of 1976, Sched. 4.

¹² Section 4(a) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

¹³ Section 4(c) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

¹⁴ Section 5 amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

PART III. – LICENCES.**6. UNLICENSED DISTILLING.**

¹⁵(1) A person other than a licensed distiller who distils spirits is guilty of an offence.

(2) A person who distils spirits otherwise than in accordance with his licence is guilty of an offence.

Penalty: ¹⁶A fine not exceeding K5,000.00.

7. LICENCES.

(1)¹⁷ ¹⁸A licence under this Act authorizes the licensee to distil and re-distil spirits from any indigenous tree or plant (except the sago palm), in accordance with the licence, until it complies with the prescribed standard of strength by percentage alcohol by volume or such other measure.

(2) The regulations may prescribe–

- (a) different types of licences for different purposes in relation to the distillation of spirits; and
- (b) different conditions for each of them.

8. LICENCE FEE.

The annual fees for licences are as prescribed.

9. APPLICATIONS FOR LICENCES.

(1)¹⁹ ²⁰Applications for licences may be made to the Commissioner General of Internal Revenue, and shall be in the prescribed form and accompanied by the prescribed particulars.

(2) The applicant for a licence shall–

- (a)²¹ pay to the Commissioner General of Internal Revenue the prescribed licence fee; and
- (b)²² give security in the prescribed form to the Commissioner General of Internal Revenue for compliance with this Act.

¹⁵ Section 6 amended by No. 18 of 1982, Sched. 5.

¹⁶ Section 6(2) Penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s5.

¹⁷ Section 7(1) amended by *Distillation (Amendment) Act* 1995 (No. 33 of 1995), s3.

¹⁸ Section 7(1) amended by *Distillation (Amendment) Act* 1995 (No. 33 of 1995), s3.

¹⁹ Section 9(1) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act* 1993 (No. 1 of 1993), s15.

²⁰ Section 9(1) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act* 1993 (No. 1 of 1993), s15.

²¹ Section 9(2)(a) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act* 1993 (No. 1 of 1993), s15.

10. GRANT OF LICENCES.

²³(1) Subject to regulations (if any), where the Commissioner General is satisfied that an application under Section 9 ought to be granted the Commissioner General may grant to the applicant a licence.

(2) Without limiting the matters that may be prescribed in the regulations referred to in Subsection (1), those regulations—

- (a) may prescribe circumstances in which the grant of a licence may be given; and
- (b) may prescribe matters to be taken into account by the Commissioner General when deciding whether to grant a licence; and
- (c) may prescribe conditions to which a permission under that subsection is to be subject.

11. PERIOD OF LICENCES.

Unless previously cancelled, a licence remains in force until 31 December after the granting of the licence.

12. RENEWAL OF LICENCES.

(1)²⁴ ²⁵Subject to Subsection (2), a licence may be renewed by the Commissioner General of Internal Revenue on application for renewal made before the expiry of the licence and on payment of the annual licence fee.

(2)²⁶ ²⁷The Commissioner General of Internal Revenue may, in his discretion, extend, for a period not exceeding 30 days, the time within which application for the renewal of a licence and the payment of the licence fee shall be made.

(3)²⁸ ²⁹The Commissioner General of Internal Revenue may require the applicant for renewal to give fresh security, and if fresh security is not given may refuse to renew the licence.

²² Section 9(2)(b) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

²³ Section 10(1) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15; Section 10 repealed and replaced by *Distillation (Amendment) Act 1995* (No. 33 of 1995), s4.

²⁴ Section 12(1) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

²⁵ Section 12(1) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

²⁶ Section 12(2) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

²⁷ Section 12(2) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

²⁸ Section 12(3) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

²⁹ Section 12(3) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

(4) In the absence of a notice of termination on the part of the subscribers, the liability of the subscribers in relation to the security given in respect of the original licence remains in force for any period for which the licence is renewed.

13. TRANSFER OF LICENCES.

³⁰A licence may be transferred with the consent of the Commissioner General of Internal Revenue on security being given by the transferee.

14. SECURITIES.

³¹Where a security is required by or under this Act, it may, in the discretion of the Commissioner General of Internal Revenue, be given—

- (a) by bond; or
- (b) by guarantee; or
- (c) by cash deposit,

or partly by one such method and partly by another.

15. RESPONSIBILITY OF DISTILLERS.

A distiller is responsible for the safe custody of all material, wort, wash, low wines, feints, spirits and power alcohol in his distillery, and for the observance of this Act within his distillery.

16. CANCELLATION OF LICENCES.

A licence may be cancelled by the Minister by notice in the National Gazette if the licensee is convicted of an offence against this Act.

³⁰ Section 13 amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

³¹ Section 14 amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

PART IV. – EXCISE SUPERVISION, ETC.**17. SUPERVISION BY OFFICERS.**

³²(1) For the purposes of this Act, the distillation of spirits by distillers is subject to the right of supervision by officers.

(2) A distiller who fails–

- (a) to provide all reasonable facilities for enabling officers to exercise their powers under this Act; or
- (b) to provide, in connection with his distillery–
 - (i) reasonable office accommodation; and
 - (ii) if required by the Collector, board and lodging for the supervising officer,

is guilty of an offence.

Penalty: ³³A fine not exceeding K500.00.

18. ANCILLARY DUTIES OF DISTILLERS.

³⁴In particular, and without limiting the effect of Section 17(2), a distiller who, in relation to his distillery, fails–

- (a) to provide, to the satisfaction of the Collector, windows or apertures for the admission of sufficient light; and
- (b) to keep burning from sunset to sunrise, or for so long as operations are being carried on after sunset and before sunrise, sufficient lamps or lights, to the satisfaction of an officer; and
- (c) to provide and place strong, safe and sufficient ladders to enable an officer to examine any vessel or utensil; and
- (d) to provide assistance when requested by an officer for carrying out his duties under this Act; and
- (e) to remove, when requested to do so by an officer, any rubbish or obstruction that conceals from view a part of the operations that are being carried on in the distillery; and
- (f) to place every vessel and utensil in a convenient position so as to be of easy access to an officer; and
- (g) to keep and maintain correct weights, scales and measures, to the satisfaction of the Collector, available at all times for the use of officers; and

³² Section 17 amended by No. 18 of 1982, Sched. 5.

³³ Section 17(2) Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

³⁴ Section 18 amended by No. 18 of 1982, Sched. 5.

- (h) to keep all plant in a secure and clean condition and free from leakage; and
- (i) to empty and re-guage plant when required to do so by the Collector; and
- (j) when required to do so by an officer at any time when the still is not being worked—
 - (i) to draw off the water in any worm tub; and
 - (ii) to clean the tub and worm; and
 - (iii) to keep the worm tub free from water for sufficient time, not exceeding two hours, for the officer to examine the tub and worm,

is guilty of an offence.

Penalty: ³⁵A fine not exceeding K1,000.00.

19. DISTILLERS' BOOKS.

³⁶A distiller who fails—

- (a) to keep the prescribed books, and render the prescribed accounts, for the information of officers; or
- (b) to verify, as prescribed, those books and accounts,

is guilty of an offence.

Penalty: ³⁷A fine not exceeding K1,000.00.

³⁵ Section 18 Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

³⁶ Section 19 amended by No. 18 of 1982, Sched. 5.

³⁷ Section 19 Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

**PART V. – REGULATION OF DISTILLATION AND DISTILLERIES
GENERALLY.**

20. PURPOSE OF DISTILLATION.

³⁸A distiller who distils spirits otherwise than for the purpose of making, and in the course of making, methylated spirits or power alcohol or potable alcohol is guilty of an offence.

Penalty: ³⁹A fine not exceeding K1,000.00.

21. POWER ALCOHOL, ETC., TO BE MADE IN DISTILLERY.

⁴⁰A person who makes methylated spirits or power alcohol or potable alcohol otherwise than in a distillery is guilty of an offence.

Penalty: ⁴¹A fine not exceeding K1,000.00.

22. DISTILLATION ON UNLICENSED PREMISES.

⁴²A distiller who distils spirits on premises other than his distillery is guilty of an offence.

Penalty: ⁴³A fine not exceeding K5,000.00.

23. TRADING, ETC., IN DISTILLERIES.

⁴⁴A person who carries on, in a distillery, a business, trade or work other than that of a distiller, without the written permission of the Commissioner General of Internal Revenue is guilty of an offence.

Penalty: ⁴⁵A fine not exceeding K1,000.00.

24. METHYLATION.

⁴⁶(1)⁴⁷ ⁴⁸A person who, in any manner or by any method, methylates or denatures in a distillery spirits of a standard less than 95% alcohol by volume, is guilty of an offence.

³⁸ Section 20 amended by No. 18 of 1982, Sched. 5; amended by *Distillation (Amendment) Act 1995* (No. 33 of 1995), s5.

³⁹ Section 20 Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

⁴⁰ Section 21 amended by No. 18 of 1982, Sched. 5; amended by *Distillation (Amendment) Act 1995* (No. 33 of 1995), s6.

⁴¹ Section 21 Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

⁴² Section 22 amended by No.18 of 1982, Sched. 5.

⁴³ Section 22 Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

⁴⁴ Section 23 amended by No.18 of 1982, Sched. 5; amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

⁴⁵ Section 23 Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

⁴⁶ Section 24 amended by No.18 of 1982, Sched. 5.

⁴⁷ Section 24(1) repealed and replaced by *Distillation (Amendment) Act 1995* (No. 33 of 1995), s7.

⁴⁸ Section 24(1) repealed and replaced by *Distillation (Amendment) Act 1995* (No. 33 of 1995), s7.

Penalty: ⁴⁹A fine not exceeding K1000.00.

(2) All spirits (not already being methylated spirits or power alcohol) in a distillery at any of the prescribed periods in each year shall, within the prescribed period after the end of any such period, by any operation that may be necessary for the purpose and by being methylated, be converted into methylated spirits or power alcohol within the meaning of this Act.

(3) If a distiller fails to comply with Subsection (2) in relation to any spirits—

- (a) the spirits are illicit spirits; and
- (b) he is guilty of an offence.

Penalty: ⁵⁰A fine not exceeding K1,000.00.

25. DIFFERENT SPIRITS TO BE KEPT SEPARATE.

⁵¹A distiller who does not keep, in the prescribed manner, methylated spirits, power alcohol and potable alcohol in his distillery separate and apart from all other spirits is guilty of an offence.

Penalty: ⁵²A fine not exceeding K1,000.00.

26. OFFENCES IN RELATION TO THE COURSE OF DISTILLATION.

⁵³A distiller who—

- (a) mixes with or adds to low wines, feints or spirits in a receiver or charger a substance that increases their specific gravity or prevents their true strength from being ascertained; or
- (b) uses in mashing or mixes with wort or wash any material so that the specific gravity of the wort or wash cannot be correctly ascertained by the prescribed saccharometer; or
- (c) has in his distillery, except by authority, wort, wash or fermented liquor not made in the distillery; or
- (d) except by authority, mixes wort, wash or fermented liquor made in his distillery with wort, wash or fermented liquor made elsewhere,

is guilty of an offence.

Penalty: ⁵⁴A fine not exceeding K1,000.00.

⁴⁹ Section 24(1) Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5; repealed and replaced by *Distillation (Amendment) Act 1995* (No. 33 of 1995), s7.

⁵⁰ Section 24(2) Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

⁵¹ Section 25 headnote repealed and replaced by *Distillation (Amendment) Act 1995* (No. 33 of 1995), s8(a); Section 25 amended by No. 18 of 1982, Sched. 5; Section 25 amended by *Distillation (Amendment) Act 1995* (No. 33 of 1995), s8(b).

⁵² Section 25 Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

⁵³ Section 26 amended by No. 18 of 1982, Sched. 5.

⁵⁴ Section 26 Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

27. UNAUTHORIZED ALTERATIONS TO PREMISES OR USE OF PREMISES.

⁵⁵A person who—

- (a) without permission, uses any place or plant in a distillery for a purpose other than that set out in the application for the licence or the plans, models or description accompanying the application; or
- (b) alters the size or position of any place or plant in a distillery without first submitting a plan or description of the proposed alteration, or without permission to make the alteration; or
- (c) brings into, or has in, a distillery plant that is not specified in the application for a licence or in the permission; or
- (d)⁵⁶ without the written permission of the Commissioner General of Internal Revenue, places a pipe or tube used in a distillery below the surface of the ground unless it is enclosed in a wooden case capable of being easily opened so that the pipe or tube may be readily exposed to view; or
- (e) places, fixes or makes a cock, plug, pipe or opening in, on, into or from a vessel or utensil in a distillery in contravention of this Act; or
- (f) makes or uses a cover, fastening, cock, plug or pipe so that a vessel or utensil in a distillery can be employed, opened, removed, filled or emptied in contravention of this Act,

is guilty of an offence.

Penalty: ⁵⁷A fine not exceeding K1,000.00.

⁵⁵ Section 27 amended by No. 18 of 1982, Sched. 5.

⁵⁶ Section 27(d) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

⁵⁷ Section 27 Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

PART VI. – REMOVAL OF SPIRITS.**28. CUSTOMS CONTROL.**

⁵⁸(1)⁵⁹ ⁶⁰All spirits distilled in a distillery and (until delivery for home consumption, sale or export) all methylated spirits and power alcohol or potable alcohol are subject to the control of the Customs.

(2) A person who moves, alters or interferes with any spirits referred to in Subsection (1) otherwise than by authority and in accordance with this Act is guilty of an offence.

Penalty: ⁶¹A fine not exceeding K1,000.00.

29. AUTHORITY TO REMOVE.

⁶²(1) A person who removes from a distillery, or delivers, spirits other than methylated spirits or power alcohol is guilty of an offence unless an entry has been made and passed authorizing their removal.

Penalty: ⁶³A fine not exceeding K5,000.00.

(2) An entry authorizing the removal of methylated spirits or power alcohol shall not be passed in respect of a smaller quantity than 45.5 litres.

30. HOURS OF REMOVAL.

⁶⁴A distiller who, except by authority, removes or suffers to be removed from his distillery methylated spirits or power alcohol or potable at any time except between 9 a.m. and 4 p.m. is guilty of an offence.

Penalty: ⁶⁵A fine not exceeding K1,000.00.

31. PURPOSE FOR WHICH SPIRITS MAY BE REMOVED.

⁶⁶Entries may be made by the distiller and passed by an officer authorizing the removal of methylated spirits or power alcohol or potable alcohol for–

- (a) home consumption; or
- (b) removal to a warehouse; or
- (c) sale; or

⁵⁸ Section 28 amended by No. 18 of 1982, Sched. 5.

⁵⁹ Section 28(1) amended by *Distillation (Amendment) Act* 1995 (No. 33 of 1995), s9.

⁶⁰ Section 28(1) amended by *Distillation (Amendment) Act* 1995 (No. 33 of 1995), s9.

⁶¹ Section 28(2) Penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s5.

⁶² Section 29 amended by No. 18 of 1982, Sched. 5.

⁶³ Section 29(1) Penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s5.

⁶⁴ Section 30 amended by No. 18 of 1982, Sched. 5; amended by *Distillation (Amendment) Act* 1995 (No. 33 of 1995), s10.

⁶⁵ Section 30 Penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s5.

⁶⁶ Section 31 amended by *Distillation (Amendment) Act* 1995 (No. 33 of 1995), s11.

(d) export.

32. SECURITY ON REMOVAL.

The distiller shall give security for the due removal or export of methylated spirits or power alcohol before an entry is passed for the removal of the methylated spirits or power alcohol to a warehouse or for sale or export.

33. PAYMENT OF DUTY BEFORE REMOVAL OF SPIRITS.

⁶⁷Unless otherwise authorized under this Act, a distiller who does not pay the duty (if any) on methylated spirits or power alcohol or potable alcohol before it is removed from his distillery is guilty of an offence.

Penalty: ⁶⁸A fine not exceeding K1,000.00.

⁶⁷ Section 33 amended by *Distillation (Amendment) Act* 1995 (No. 33 of 1995), s11; amended by No. 18 of 1982, Sched. 5; amended by *Distillation (Amendment) Act* 1995 (No. 33 of 1995), s12(a) and (b).

⁶⁸ Section 33 Penalty clause amended by *Customs (Penalties) Act* 1993 (No. 37 of 1993), s5.

PART VII. – POWERS OF OFFICERS.**34. ACCESS TO DISTILLERY AND DISTILLER'S BOOKS.**

An officer—

- (a) shall be allowed complete access at all times to every part of a distillery or of premises on which a still is kept; and
- (b) may examine, gauge, re-test, take account of and note any plant, materials or spirits in the distillery or premises; and
- (c) may examine and take copies of, or extracts from—
 - (i) all books and accounts required to be kept by the distiller under Section 19; and
 - (ii) all books kept by the distiller in relation to—
 - (A) the distillery; or
 - (B) the making of spirits; or
 - (C) the sale of methylated spirits or power alcohol or potable alcohol.

35. ENTRY AND SEARCH OF PREMISES.

(1) If after having declared his name and business and demanded admission to a distillery or a part of a distillery an officer is not immediately admitted accordingly, he may break open a door or window, or break through a wall, in or on the distillery in order to obtain admission.

(2) An officer having with him a writ of assistance or a Customs warrant under the *Customs Act 1951* may—

- (a) at any time of the day or night enter into any house, premises or place; and
- (b) break open and search—
 - (i) the house, premises or place; and
 - (ii) any depository, chest, trunk or package,

in which illicit stills or illicit spirits are or may reasonably be supposed to be.

36. STOPPING AND SEARCH OF VEHICLES AND BOATS.

⁶⁹(1) An officer may, on reasonable suspicion, stop and search any vehicle or boat for the purpose of ascertaining whether an illicit still or illicit spirits are on it.

(2) When required to do so by an officer, the driver of a vehicle or the person in charge of a boat must stop the vehicle or boat and permit an officer to search it.

⁶⁹ Section 36 amended by No. 18 of 1982, Sched. 5.

Penalty: ⁷⁰A fine not exceeding K200.00.

37. DETECTION AND SEARCH OF PERSONS.

An officer having reasonable cause for suspicion may—

- (a) stop a person carrying any goods and question him as to whether he has in his possession an illicit still of illicit spirits; and
- (b) search any goods that the person is carrying.

38. POWERS OF OFFICER IN DETECTING ILLEGAL DEALING WITH SPIRITS.

An officer—

- (a) having reasonable cause for suspicion may, by day or night—
 - (i) break up the ground in, adjoining or near a distillery or a wall or portion of a wall; and
 - (ii) do any act that he thinks necessary for the purpose of detecting a contravention of this Act; and
- (b) may, on finding a pipe or conveyance leading to or from the distillery—
 - (i) break up or break any ground, house, wall or other place through or into which the pipe or conveyance leads; and
 - (ii) break up or cut away any such pipe or conveyance; and
 - (iii) turn any cock; and
 - (iv) examine whether any such pipe or conveyance conveys or conceals spirits.

39. SEIZURE OF FORFEITED GOODS.

An officer may seize and secure forfeited goods or goods that he has reasonable cause to believe are forfeited, and may—

- (a) convey them to a Government warehouse, police station or place of security; or
- (b) mark and impound them on the premises where they are found.

40. LOCKING OF PLANT, ETC.

⁷¹(1) An officer may lock up, seal, mark, fasten or otherwise secure plant in or on a distillery or premises on which a still or seized goods are kept.

(2) A person who, except by authority, opens, alters, breaks or erases any lock, seal, mark or fastening placed under Subsection (1) is guilty of an offence.

⁷⁰ Section 36 Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

⁷¹ Section 40 amended by No. 18 of 1982, Sched. 5.

Penalty: ⁷²A fine not exceeding K1,000.00.

41. SAMPLES.

⁷³(1) An officer may take a sample of wort, wash, low wines, feints or spirits from a vessel, and the strength of a sample so taken shall *prima facie* be deemed to be the strength of the whole of the contents of the vessel from which it is taken.

(2) Before a sample is taken under Subsection (1), a distiller may stir up and mix together all the liquor in the vessel from which the sample is to be taken.

(3) A person who is the owner of, or is in possession of—

(a) any spirits; or

(b) any liquor that an officer has reasonable ground to suspect is spirits,

and refuses to deliver to an officer samples of the spirits or liquor on tender of a reasonable price, is guilty of an offence.

Penalty: ⁷⁴A fine not exceeding K200.00.

42. TESTING OF QUANTITY OF PROOF SPIRIT.

⁷⁵(1) For the purpose of testing the quantity of spirits at proof in a wash by distillation the officer may require a charger or receiver to be emptied and cleaned and any quantity of the wash to be distilled, and the produce to be conveyed into the charger or receiver.

(2) A distiller who fails to keep all low wines, feints or spirits placed in a charger or receiver under Subsection (1) unmixed and unaltered until the officer has taken an account of their quantity and strength is guilty of an offence.

Penalty: ⁷⁶A fine not exceeding K1,000.00.

43. OBSTRUCTION.

⁷⁷A person who obstructs, molests, resists or hinders an officer in the performance of his duty under this Act is guilty of an offence.

Penalty: ⁷⁸A fine not exceeding K500.00.

⁷² Section 40(2) Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

⁷³ Section 41 amended by No. 18 of 1982, Sched. 5.

⁷⁴ Section 41(3) Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

⁷⁵ Section 42 amended by No. 18 of 1982, Sched. 5.

⁷⁶ Section 42(2) Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

⁷⁷ Section 43 amended by No. 18 of 1982, Sched. 5.

⁷⁸ Section 43 Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

PART VIII. – PENAL PROVISIONS.***Division 1.******Forfeitures.*****44. FORFEITURE.**

The following things are forfeit to the State:–

- (a) an illicit still;
- (b) illicit spirits and the vessels in which they are contained;
- (c) any material capable of being used in the course of or in connection with the distillation of spirits found on premises on which there is an illicit still;
- (d) any vehicle or boat conveying an illicit still or illicit spirits and animals and harness used in drawing any such vehicle;
- (e) any wort and wash removed from a distillery except by authority;
- (f) all low wines, feints or spirits in a receiver or charger with which or to which a substance has been mixed or added, except by authority, that increases their specific gravity or prevents their true strength from being ascertained;
- (g) any wort and wash in a distillery the gravity of which cannot be ascertained by the prescribed saccharometer;
- (h) wort, wash and fermented liquor unlawfully in a distillery;
- (i) spirits found in a distillery elsewhere than in the proper charger, receiver, spirit store or spirit warehouse.

Division 2.***General Offences.*****45. ILLICIT STILLS AND SPIRITS.**

⁷⁹A person who knowingly–

- (a) uses or unlawfully has in his possession or custody, or under his control or on his premises, an illicit still; or
- (b) makes illicit spirits; or
- (c) supplies the means or materials for establishing, maintaining or working an illicit still; or
- (d) receives, carries, conveys or conceals or has on his premises, or in his custody or under his control, illicit spirits; or

⁷⁹ Section 45 amended by No. 18 of 1982, Sched. 5.

- (e) is found without lawful excuse in a place where distillation is being illegally carried on; or
- (f) sells or disposes of illicit spirits; or
- (g) purchases illicit spirits; or
- (h) makes, sells or has in his possession or custody or control wash or wort intended for distillation by an illicit still,

is guilty of an offence.

Penalty: ⁸⁰A fine not exceeding K5,000.00.

46. UNLAWFUL USE OF STILL.

⁸¹A distiller who uses his still contrary to the tenor of his licence or this Act is guilty of an offence.

Penalty: ⁸²A fine not exceeding K1,000.00.

47. DISTILLER SELLING SPIRITS NEAR DISTILLERY.

⁸³A distiller who keeps or makes use of a store for the sale or storage of methylated spirits or power alcohol or potable alcohol on which the duty (if any) has been paid, at a place within 91.44m from his distillery, is guilty of an offence.

Penalty: ⁸⁴A fine not exceeding K1,000.00.

⁸⁰ Section 45 Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

⁸¹ Section 46 amended by No. 18 of 1982, Sched. 5.

⁸² Section 46 Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

⁸³ Section 47 amended by No. 18 of 1982, Sched. 5; amended by *Distillation (Amendment) Act 1995* (No. 33 of 1995), s14.

⁸⁴ Section 47 Penalty clause amended by *Customs (Penalties) Act 1993* (No. 37 of 1993), s5.

PART IX. – MISCELLANEOUS.**48. ASCERTAINMENT OF STRENGTH OF SPIRITS.**

(1)⁸⁵ ⁸⁶The strength of spirits may be ascertained for the purposes of this Act by means of a hydrometer approved by the Commissioner General of Internal Revenue.

(2) Where, in the opinion of a Collector, the strength of any spirits cannot immediately be ascertained by a hydrometer, the strength may be ascertained after distillation or in any prescribed manner.

(3)⁸⁷ ⁸⁸All costs associated with the analysis of spirits, by whatever method used, to ascertain the volume of alcohol contained in spirits are payable by the distiller or manufacturer of the spirits.

49. PAYMENT FOR BOARD AND LODGING.

A person providing board and lodging for an officer at the request of a Collector is entitled to fair remuneration for the board and lodging at such rates as are agreed or prescribed.

50. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for—

- (a) limiting or restricting the work or duties that a person shall be allowed or permitted by a distiller to perform in or about a distillery; and
- (b) prohibiting a citizen or class of citizens from being engaged for work in, or entering or remaining in, a distillery.

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⁸⁵ Section 48(1) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

⁸⁶ Section 48(1) amended by *Commissioner General of Internal Revenue (Consequential Amendments) Act 1993* (No. 1 of 1993), s15.

⁸⁷ Section 48(3) added by No. 43 of 2000.

⁸⁸ Section 48(3) added by No. 43 of 2000.