

	<b>EXTERNAL POLICY SECURITIES</b>	<b>Document #</b> SC-SE-05	<b>Revision #</b> 0	<b>Effective</b> 19.09.2006
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REVISION HISTORY				
REV	DESCRIPTION OF CHANGE	AUTHOR	APPROVAL	OWNER
0	Initial Release	A. Jaimungal	DCOO: Operations Policy and Performance Management	Head: Customs Operational Unit
1				
2				
3				
4				

REFERENCE TO LEGISLATION & OTHER REFERENCES	
This procedure must be read with the following:	
TYPE OF REFERENCE	REFERENCE
Legislation and Rules Administered by SARS:	<b>Customs and Excise Act No. 91 of 1964:</b> Sections 39(1)(b), 47B(6), 54E(4), 59A(2)(a), 60(1)(c), 61(1) and (2), 64A(2) and (3), 64B(3) and (4), 64C(1), 64D(5), 64E. <b>Customs and Excise Rules:</b> 18A.08, 18A.10(a), 19A.02(a), 19A.08(c), 20.17(b), 26.01(f), 37A.14(b), 46A.2.16 (c), 49A.12(12)(b), 49B.10(9)4(b), 54F.04(a), 59A.07(2), 59A.08(2), 60.01(1)(e), 60.02(1)(d), 60.07(2), 64B.01(1,2,3,4), 64D.01(1,3)(c), 64D.04(1), 64D.09(4), 64D.10(5), 64D.11(5), 64D.13(9), 64D(19), 64E(2)(b), 64F.02, 64G.03, 64G.04, 64G.06, 120.08, 120.09. <b>Income Tax Act No. 58 of 1962:</b> Section 12E
Other Legislation:	<b>Promotion of Administrative Justice Act No. 3 of 2000:</b> Section 3 <b>General Law Amendment Act No. 50 of 1956:</b> Section 6 <b>National Small Business Act No. 102 of 1996:</b> Section 1, Schedule to the Act
International Instruments:	<b>Kyoto Convention:</b> General Annex, Chapter 5: Security

REFERENCE TO QUALITY DOCUMENTS		
This procedure must be read with the following quality documents:		
DOCUMENT #	DOCUMENT TITLE	QUALITY REQUIREMENTS
QMS-01	Quality Management System Manual	ISO 9001:2000
SC-DT-B-01	Customs Deferment	All
SC-IM-03-03	Provisional Payments	All
SC-SE-01	Surety Required for the Oil Industry - External	Withdrawn

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## 1 PURPOSE

- To identify the instances in which security is required and to introduce a process of risk assessment to review the amount of security required.

## 2 SCOPE

- This policy and procedure identifies the instances in which security is required, the standards used to determine the amount of security and the criteria used to review the amount of security.
- With the exception of the determination and review of the amounts of provisional payments furnished in lieu of surety bonds for the purposes of excise this policy excludes the determination of the amount of security in the form of all other provisional payments.

## 3 DEFINITIONS AND ACRONYMS

<b>CC</b>	Close Corporation
<b>DCCO</b>	Deputy Chief Operations Officer
<b>Financial Institution</b>	Banking or Insurance institution approved by the Financial Services Board
<b>FSB</b>	Financial Services Board
<b>JSE</b>	Johannesburg Stock Exchange
<b>LTD.</b>	Limited
<b>PAYE</b>	Pay As You Earn
<b>Person</b>	Includes a company, close corporation, co-operative society, firm, partnership, statutory body or club
<b>PTY.</b>	Proprietary
<b>QMS</b>	Quality Management System
<b>SDL</b>	Skills Development Levy
<b>Security</b>	That which ensures to the satisfaction of Customs that an obligation to Customs will be fulfilled
<b>Suretyship</b>	A contract in terms of which one person (the surety) binds himself / herself as debtor to the creditor of another person (the principal debtor) to render the whole or part of the performance due to the creditor by the principal debtor if and to the extent that the principal debtor fails, without lawful excuse, to render the performance himself / herself
<b>The Act</b>	The Customs and Excise Act No. 91 of 1964
<b>UIF</b>	Unemployment Insurance Fund
<b>VAT</b>	Value-Added Tax

## 4 POLICY

- In terms of Sections 47B(6), 54E(4), 59A(2)(a), 60(1)(c), 61(1) and (2), 64A(2) and (3), 64B(3) and (4), 64C(1) and 64D(5) the Commissioner may require that security be furnished, in the form, nature or amount determined by the Commissioner in order to protect the State from any loss likely to be incurred as a result of the activities to be carried out.
- The amount of the security will be determined in terms of standards and assessed on an individual basis in terms of the criteria established.

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## 5 PROCEDURE

### 5.1 PERSONS REQUIRED TO FURNISH SECURITY AND THE FORM OF SECURITY

#### 5.1.1 SECURITY AS A CONDITION OF REGISTRATION

- In terms of Section 59A(2)(a) of the Act, the Commissioner may before registration require any person or class of persons to furnish such security and enter into such agreement as the Commissioner may determine.
- Currently, the following persons are required to furnish security as a result of registration. The security must be in the form of a surety bond or in the form of a provisional payment where the option is given. Surety bonds shall be given by an approved financial institution:

Person required to furnish security	Customs and Excise Act	Form of security
A person applying to be registered in terms of Schedule Number 4 to the Act - rebate item 470.01 – Temporary Importation	Section 75	Customs and Excise Special Bond
A person applying to be registered in terms of Schedule Number 4 to the Act - rebate item 470.03	Section 75	SC-SE-04-FR1 - Bond for importing goods in terms of item 470.03 and note 7(D) of part 4 of Schedule No. 1
A person applying to be registered in terms of Schedule Number 3 to the Act	Section 75	DA 107E – Bond: Customs Rebates
A person applying to be registered in terms of Schedule Number 6 to the Act	Section 75	DA 112E – Customs and Excise Bond: Excise Rebates or a provisional payment not exceeding R5 000.

**EXCEPTION:**

A person applying for registration in terms of Section 47B of the Act for the purposes of Air Passenger Tax will not be requested to furnish security at the time of application for registration. However, security may be requested if an agent or operator fails to submit returns on or before the due date or falls in arrears with the payment of Air Passenger Tax when due.

#### 5.1.2 SECURITY AS A CONDITION OF LICENSING

- In terms of Section 60(1)(c)(i) “Any person applying for a licence under any provision of this Act shall, before such licence is issued, furnish security in the form, nature or amount determined by the Commissioner to protect the state from any loss likely to be incurred as a result of the activities to be licensed.”
- Currently, the following persons are required to furnish security as a result of licensing in the form of a surety bond or in the form of a provisional payment where the option is given. Such surety bond shall be given by an approved financial institution:

Person required to furnish security	Customs and Excise Act	Form of security
A person applying for a customs and excise warehouse license	Section 61	DA 108E – General Bond for Approved Warehouses
A person applying for a container depot license	Section 64A	SC-SE-04-FR2 – Bond: Container Depot Operator
A person applying for a clearing agent license. Security is required in respect of each district office where business will be conducted with the SARS. This security must be furnished at the SARS branch office where the clearing agents head office is situated.	Section 64B	DA 110E – Bond: General

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<b>Person required to furnish security</b>	<b>Customs and Excise Act</b>	<b>Form of security</b>
A person applying for a license to search a wreck or to search for a wreck	Section 64C	DA 262 – Bond to search for abandoned wrecks along the coast of the Republic of SA and to take possession of articles recovered there from
A person applying for a license as a remover of goods in bond	Section 64D	Bond for a remover of goods in bond. Bond by a consignor in respect of the removal or carriage by road of bonded goods entered for removal in bond or for export
A person applying for a license as a distributor of fuel	Section 64F	Pro Forma Bond for a licensed distributor of fuel or a provisional payment for amounts of R20 000 or less
A person applying for a license as a degrouping depot	Section 64G and the rules thereto.	Pro Forma Bond for a Licensed Degrouping Depot
A person applying for a license as a special manufacturing warehouse for environmental levy goods	Section 54E	Pro Forma bond for environmental levy goods or a provisional payment not exceeding R5 000
A person applying for a license as an Excise Manufacturer	Section 19A	DA 111E – Bond: Manufacture of excisable products or a provisional payment for amounts of R20 000 or less
<b>EXCEPTION</b> A person applying for a license in terms of Section 36A of the Act for the purposes of manufacture or ownership of excisable goods specified in Section B of Part 2 of Schedule No.1 (Ad Valorem Duty) will not be requested to furnish security at the time of application for licensing. However, security may be requested if a licensee fails to submit returns on or before the due date or falls in arrears with the payment of Ad Valorem Excise duty when due.		

### 5.1.3 SECURITY AS MAY BE REQUIRED FOR PARTICIPATION IN THE DEFERMENT SCHEME

<b>Person required to furnish security</b>	<b>Customs and Excise Act</b>	<b>Form of security</b>
A person making application for deferment	Sections 39(1)(b), 64E(2)(b), 59A(2)(a), and 60(1)(c)(i)	DA 651 - Guarantee for the payment of Sums due to the Commissioner of the South African Revenue Service

## 5.2 AMOUNT OF SECURITY

- The standard amount of security as listed below is required by the Commissioner, at the time of licensing, registration or application for deferment. This standard amount will be reviewed after sufficient information has been gathered to establish inter alia your compliance history.
- However, a client who meets the criteria for small business status will be granted a deduction of 40% off the standard amount.

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- Existing clients qualifying for small business status may apply for the 40% deduction which will only be granted if it is established that they have an appropriate record of compliance from the time they licensed or registered.
- To establish if you qualify for small business status, please refer to SC-SE-05-A1. New clients as well as existing clients qualifying for small business status must complete Part 1 of SC-SE-05-A1, and submit such to the Branch Office where he / she conducts business.
- Other clients, who do not fall into the category of small business, will be informed in writing to complete Part 2 of SC-SE-05-A1. After being subjected to a process of risk assessment, you will be advised if the security you have posted can be reduced.
- The standard amount of security as listed below is required by the Commissioner before a client engages in that activity.

<b>Form of security</b>	<b>Standard for amount of security</b>
DA 651 – Guarantee for the payment of Sums due to the Commissioner of the South African Revenue Service	(a) An amount that will cover the duty and VAT (b) Applications to defer VAT only – 25% of the VAT to be deferred.
Customs and Excise Special Bond – Temporary Importation – Rebate Item 470.01	An amount that will cover the duty and VAT
SC-SE-04-FR1 - Bond for importing goods in terms of item 470.03 and note 7(D) of part 4 of Schedule No. 1	An amount that will cover any duty that will be rebated at any given time in an approved Customs and Excise rebate store. As a standard new clients are requested to project the duties that will be rebated in a 12 month period. The standard for existing clients is the duty that was rebated in the preceding 12 months
DA 107E – Bond: Customs Rebates	An amount that will cover any duty that will be rebated at any given time in an approved Customs and Excise rebate store. As a standard new clients are requested to project the duties that will be rebated in a 12 month period. The standard for existing clients is the duty that was rebated in the preceding 12 months
DA 112E – Customs and Excise Bond: Excise Rebates	R 5 000 (five thousand rand)
DA 108E – General bond for approved warehouses	(a) The security amount must cover any duty on goods that will be stored at any given time in a licensed Customs and Excise warehouse. As a standard new clients are requested to project the duties on goods that will be stored in a 12 month period (b) Fuel Industry – Clients not in possession of a fuel products manufacturing warehouse license must lodge security to cover any duty on goods that will be stored at any given time in a licensed Customs and Excise warehouse with a maximum of R 5 000 000 (five million rand)
SC-SE-04-FR2 – Bond: Container Depot Operator	R1 000 000 (one million rand)
DA 110E – Bond: General – Clearing Agents	R10 000 (ten thousand rand)

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Form of security	Standard for amount of security
DA 262 – Bond to search for abandoned wrecks along the coast of the Republic of South Africa and to take possession of articles recovered there from	R5 000 (five thousand rand)
Bond for a remover of goods in bond. Bond by a consignor in respect of the removal or carriage by road of bonded goods entered for removal in bond or for export	The security amount must cover any duty and VAT on goods that will be transported at any given time
Pro forma bond for environmental levy goods	R5 000 (five thousand rand)
Pro Forma Bond for a Licensed Degrouping Depot	The average amount of duty leviable monthly on imported cargo removed by the applicant for degrouping over a six month period; or An estimated amount of duty so leviable in respect of cargo that will be removed to the degrouping depot by the applicant over a six month period after commencing degrouping operations
DA 111E – Bond: Manufacture of excisable products	Registrants and Excise Special Storage warehouses - R5 000 (five thousand rand) <b>Fuel products Manufacturing warehouses</b> – A client who has a fuel products manufacturing warehouse license must lodge a bond of R 5 000 000. This bond will serve as security for all other warehouses licensed for that client <b>Other Manufacturing warehouses:</b> <b>Existing licensees:</b> An amount, not exceeding one month's duty, calculated as the average duty payment to Excise for the previous financial year, rounded upwards to the nearest thousand, with a minimum of R5 000 and a maximum of R2 000 000 (two million rand) <b>New applicants / licensees:</b> An amount, not exceeding one month's duty, calculated as the average estimated duty payment to Excise for the full current financial year, rounded upwards to the nearest thousand, with a minimum of R5 000 and a maximum of R2 000 000
Pro Forma Bond for a Licensed Distributor of Fuel	The security amount must cover the duty on the goods that will be stored at any given time with a maximum of R 5 000 000

### 5.3 APPLICATION FOR REGISTRATION AND LICENSING

- A client making application to Customs and Excise may approach the Branch Office where he / she conducts business or access the SARS internet website to obtain the necessary applications.
- Ascertain from paragraph 5.1 above, whether security is a requirement for the activity.
- Complete application form DA 185 or DA 650 if making application for deferment and if you qualify for small business status, PART 1 of, SC-SE-05-A1 (Assessment for security requirements) and submit such to the Branch Office where you conduct business.
- Customs and Excise will inform you of the form of security required and the amount of security.

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#### **5.4 WHO MAY ISSUE SURETY BONDS?**

- SARS only accepts surety bonds issued by a South African registered bank or an insurer registered with the FSB for the purpose of issuing guarantees.
- A list of the insurers approved to issue guarantees can be found at <http://www.fsb.co.za/>, Insurance, List of registered insurers.
- A list of South African registered banks can be found at [www.reservebank.co.za](http://www.reservebank.co.za), Bank supervision, South African registered banks and representative offices.

#### **5.5 SIGNATURE AND GENERAL REQUIREMENTS**

- Ensure that the terms and conditions i.e. the wording as contained in the bond / addendum document has not been changed.
- The full names of the principal and surety and the full names and designations of properly authorised individuals authorised to sign on behalf of the principal and surety must appear on the bond / addendum.
- A signatory must sign in his / her own capacity and not on behalf of someone else.
- The signatures of 2 witnesses for each signature of the individuals authorised to sign the bond / addendum on behalf of the principal and surety must be present.
- Any alterations to the bond must be initialed by all signatories including witnesses.
- The corporate seal (stamp) of the financial institution must be impressed on the bond / addendum.
- Ensure that the reference number from the financial institution is inserted on the bond / addendum.
- If any of the above is not in order the surety bond / addendum will be returned to you for the necessary corrective action which will delay the process of registration or licensing.

#### **5.6 THE USE OF ADDENDUMS TO SURETY BONDS**

- While the form of the bond may not be changed after issuance, the terms and conditions may be changed by issuing an addendum. An addendum is only acceptable in the following circumstances:
  - For a change in the name of the principal; or
  - A change in the amount of the bond.
- The addendum must be signed and sealed by duly authorised officers of the principal and of the financial institution. It must also clearly identify the bond to which it refers, including the name of the financial institution, the number of the bond, the date of issue, the name of the principal and the amount for which the bond has been issued.

#### **5.7 CHANGE IN LEGAL STATUS**

- If your legal status has changed you must notify in writing the Customs Office holding your bond.

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- The following are regarded as changes in legal status:
  - Change in the name of a company; for example a company originally furnished a bond with the name and identity, ABC Close Corporation. Six months later the company decided to change its name to XYZ Close Corporation. Therefore, the company has undergone a change in name from ABC to XYZ.
  - Change in legal identity of a company; for example a company declares the name and identity on the surety bond as ABC (Pty) Ltd. a private company. The company decides to list on the JSE and converts its identity to ABC LTD. a public company. Therefore, the company has undergone a change in legal identity from (Pty) Ltd. a private company to LTD. a public company.
  - Mergers of companies.
  - Takeovers.

## 5.8 CANCELLATION OF SURETY BOND

- A bond shall be cancelled in the following instances:
  - On notice of cancellation by the client;
  - When the financial institution gives notice in writing of withdrawal of bond;
  - When a client has undergone a change in legal identity; or
  - When a client has defaulted and is unable to meet its obligations and the SARS: Customs deems it necessary to cancel the client.

## 5.9 NOTICE OF CANCELLATION BY THE CLIENT

- A client, who has no further use for the customs and excise facility licensed or registered for, may apply in writing for the cancellation of such facility.
- The notice of cancellation must provide the following information:
  - The name of the principal;
  - The type of activity secured;
  - The bond number; and
  - The office(s) where the bond is valid i.e. one or more customs office(s).
- The notice of cancellation must be addressed to the Customs office holding the security.

## 5.10 NOTICE OF WITHDRAWAL OF BOND BY FINANCIAL INSTITUTION

- In terms of Rule 120.09 any person who has given a surety bond may give the Controller concerned 30 days notice of withdrawal of such bond. The 30 day period must commence from the date of receipt of the notification of withdrawal by Customs and not from the date of the notification.
- After the expiry of the 30 day period, no new obligations can accrue under the bond concerned. However, the surety remains responsible for transactions entered into prior to the expiry of the period;
- The notice of withdrawal must provide the following information:
  - The name of the principal;
  - The type of activity secured;
  - The bond number; and
  - The office(s) where the bond is valid i.e. one or more customs office(s);
- The notice of cancellation must be addressed to the Customs office holding the security.

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## 5.11 BREACH OF CONDITIONS

- When the conditions for which security is taken are not met, SARS will withhold a sufficient portion of the security to cover the amount payable.
- In the case of surety bonds, after reasonable attempts have been made to collect from the principal debtor, relevant documentation to substantiate the claim and a request for payment of the actual amount to be paid by the surety will be made to the surety concerned with a copy to the principal debtor.

## 6 QUALITY RECORDS

Form Number	Title
Annexure A to Rule 54F	Pro Forma Bond for environmental levy goods
Annexure A to Rule 64F	Pro Forma Bond for a licensed distributor of fuel
DA 70	Application to make a provisional payment
DA 107 E	Bond: Customs Rebates
DA 108 E	General Bond for Approved Warehouses
DA 109 E	Addendum to Customs and Excise Bond
DA 110 E	Bond: General
DA 111 E	Bond: Manufacture of Excisable Products
DA 112 E	Customs and Excise Bond: Excise Rebates
DA 185	Application form: Registration / Licensing of Customs and Excise Clients
DA 262	Bond to search for abandoned wrecks along the coast of the Republic of SA and to take possession of articles there from
DA 650	Application for Deferment
DA 651	Guarantee for the payment of Sums due to the Commissioner of the South African Revenue Service
DA 651 A	Addendum to Deferment Guarantee
Rule 64 D	Pro Forma Bond for a remover of goods in bond
Rule 64G.27	Pro Forma Bond for a licensed degrouping depot
SC-SE-05-A1	Assessment for security requirements
SC-SE-04-FR1	Bond for importing goods in terms of item 470.03 and note 7(D) of part 4 of Schedule No. 1
SC-SE-04-FR2	Bond: Container Depot Operator