

CUSTOMS AND EXCISE ACT, 1964 (ACT 91 OF 1964)

(Section 64B and its rules)

LICENSING OF CLEARING AGENTS

**Pro Forma Agreement between the Clearing Agent
and the Commissioner**

Annexure A

As _____

(Full name of applicant – hereinafter referred to as “licensee”)

of _____

(Physical address of applicant – not a P O Box)

herein represented by

Full Name

Capacity

* duly authorised thereto by virtue of –

- (a) *a resolution passed at a meeting of the Board of Directors held at _____
on _____ day of _____; or
- (b) express consent in writing of all the partners of a partnership/*members of the close
corporation/*trustees of the trust; or
- (c) *being a person having the management of any other association of persons referred to
in rule 60.03(2)(a)(iv).

Has applied to be licensed as a clearing agent; and

(*Delete whichever is not applicable)

as the Commissioner has considered the application and decided to issue a licence subject to compliance with the terms and conditions of this agreement, it is agreed that the licensee shall be bound by the following:

1. (a) Licensee undertakes to furnish security in the amount determined and in a form and in the nature determined by the Commissioner and to maintain such security until such time as the Commissioner is, on good cause shown, satisfied that every liability incurred under the Act by the licensee has ceased and each of the conditions of the licence has been complied with.
- (b) Licensee agrees and undertakes that the security agreed on in paragraph 1(a) shall only be utilised as security for the fulfilment of the obligations of licensee and that it shall not under any circumstances be utilised by any other clearing agent.
2. Licensee acknowledges as a pre-condition to being allowed to engage in the activities regulated by the Act and for which the licence is granted that it –
 - (a) understands that its rights to conduct the business of a clearing agent is subject to compliance with customs and excise laws and procedures, the provisions of this agreement and any standards of conduct that may be imposed by the Commissioner;
 - (b) is aware of the civil and criminal regulatory consequences of non-compliance with such laws and procedures and the provisions of this agreement.
 - (c) (i) Licensee is aware of and acknowledges the statutory powers, rights and obligations of the Commissioner and his/her delegated officers to inspect for the purposes of the Act the books, accounts, documents and other records of the business in respect of which the licence is issued, including such records in respect of individual clients or specific transactions conducted for any principal as well as the banking accounts and records relating to the business conducted under the licence.

(ii) Licensee hereby agrees to and authorises the inspection of such books and documents and business banking accounts as the Commissioner and the delegated officers may require.

(d) Licensee is aware of its obligations and undertakes to advise the Commissioner for the purposes of section 60(2) of the Act, whenever the licensee or any employee of the licensee –

- (i) has contravened or failed to comply with the provisions of the Act;
- (ii) has failed to comply with any condition or requirement of this agreement;
- (iii) is convicted of any offence under the Act;
- (iv) is convicted of any offence involving dishonesty;
- (v) is sequestered or liquidated;
- (vi) fails to comply with the qualification requirement set out in the rules; or
- (vii) ceases to carry on the business of a clearing agent in the area of control of the Controller where he is licensed,

and licensee acknowledges the right to the Commissioner to cancel or suspend the licence in accordance with the provisions of section 60(2) on the grounds of any of these provisions or requirements.

(e) Licensee in addition undertakes:

- (i) to keep on the business premises books, accounts, documents and other records relating to the transactions of the business comprising, where applicable, at least –
 - (aa) in the case of imported goods, copies of the relative import bills of entry, transport documents, suppliers invoices, packing lists, bunk stamped invoices, payment advices and other documents required in terms of section 39 of the Act;
 - (bb) in the case of excisable and fuel levy goods not being distillate fuel referred to in subparagraph (cc), books, accounts and documents as the Controller may require;
 - (cc) in the case of distillate fuel on which a refund of fuel levy is granted in terms of item 670.04 of Schedule No. 6, the documents specified in Note 6 to item 670.04.03;
 - (dd) in the case of exported goods, copies of the relative export bills of entry, invoices and other transport documents;

- (ee) in the case of goods subject to rules of origin such records as are prescribed in the rules for sections 46, 46A and 49;
 - (ff) every written instruction given for purposes of the Act by any principal;
 - (ff) books, accounts and documents relating to the removal of goods in bond; and
 - (gg) to keep any other books, accounts, documents and other records which may be required in terms of any rule relating to any business transacted as a clearing agent under the provisions of the Act;
- (ii) notwithstanding any other provisions in the Act or the rules thereto, to keep such books, accounts, documents or other records available for inspection by the Commissioner for a period of five years calculated from the end of the calendar year in which any such document was created, lodged or required in respect of any customs and excise procedure;
 - (iii) to answer and to ensure that any employee answers fully and truthfully any questions of the Commissioner or an officer relating to its business or that of its principal required to be answered for purposes of the Act;
 - (iv) to render such returns or submit such particulars in connection with its transaction and the goods to which the transactions relate as the Commissioner or his delegated officer may require;
 - (v) to institute adequate administrative measures and procedures in and for its business and if and when able to do so to improve such measures so as to ensure that –
 - (aa) the contents of all documents submitted to the Commissioner or a Controller for purposes of the Act are duly verified and completed in accordance with the instructions of its principal and comply with the provisions of the Act;
 - (bb) every person in the employ of the licensee and engaged in the business of clearing agent is conversant with customs and excise laws and procedures, the contents of this agreement and with the requirements relating to the business of the licensee and the customs and excise administration in respect of such business and is able to answer any question that may be required to be answered for purposes of the Act;

(cc) the Commissioner is advised as soon as it may come to the knowledge of the licensee or any person in the employ of the licensee that any principal of the licensee has failed to comply with the provisions of the Act and of any steps the licensee took to prevent such non-compliance.

3. Licensee is aware of the obligation at all times to disclose the name, address and such other particulars as may be required by the Act of the principal on whose behalf licensee transacts customs and excise business and accepts that where such particulars are not so disclosed in circumstances where it is required to be disclosed, licensee shall be liable for the fulfilment of the obligations imposed on such principal as contemplated in section 99(2).
4. Licensee is aware of the prohibition to utilise any security given for purposes of the licence as security for any other clearing agent and specifically undertakes to institute such measures as may be necessary to ensure compliance with this requirement.
5. Licensee understands and accepts –
 - (i) that any application for a new licence or renewal of a licence may be refused on the grounds specified in section 60(2) and where any of the provisions are applicable licensee undertakes to disclose all relevant facts when applying for such licence;
 - (ii) the condition that at least the licensee or one of its directors, members, partners, trustees or employees, as the case may be, transacting the customs and excise related clearing agent business with clients of such business at the premises or in the area for which the licence is issued shall have sufficient knowledge of customs and excise laws and procedures to render a valuable service to such clients.
6. Licensee undertakes to render such proof, including audited financial statements, as may be required from time to time in order to prove that it has, and is maintaining, sufficient financial resources to conduct its business in an efficient and responsible manner.
7. (a) The licensee chooses *domicilium citandi et executandi* at:

(b) The Commissioner chooses *domicilium citandi et executandi* at:

8. Thus done and signed at: _____ on this

Licensee

Witness

Thus done and signed at: _____ on this _____

for and on behalf of the Commissioner

Witness