

CUSTOMS AND EXCISE ACT, 1964
AMENDMENT OF RULES (NO. DAR/36)

Under sections 60 and 120 of the Customs and Excise Act, 1964, the rules published in Government Notice R.1874 of 8 December 1995 are amended to the extent set out in the Schedule hereto.

P.J. GORDHAN
COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

Schedule

- (a) By the substitution for the heading to the rules for section 60 of the following heading:

"RULES FOR SECTION 60 OF THE ACT

Issuing and renewal of licences;"

- (b) By the substitution for rule 60.01 of the following rules:

"60.00 The number reflected in brackets after the rule number refers to the subsection to which the rule relates.

60.01(1) Definitions, application for licence and delegation

- (a) For the purposes of these rules, unless the context otherwise indicates—

"customs and excise laws and procedures" includes—

- (i) any provision contemplated in the definition of "this Act" in the Customs and Excise Act, 1964 (Act No. 91 of 1964);
- (ii) any condition or obligation imposed, any process or procedure instituted or any manual or other directive issued, by the Commissioner or a Controller for the purpose of administering any activity regulated by the Act;
- (iii) any provision of any other law prohibiting or restricting or otherwise controlling the manufacture, use, importation, exportation, transit carriage, removal or other movement of goods administered under any provision of the Act;

"licensee" means any person licensed under any provision of the Act;

"person" includes—

- (i) any natural person or any insolvent or deceased estate;
- (ii) any juristic person incorporated in the Republic or a juristic person not incorporated in the Republic that has, or any other association of persons whether or not formed in the Republic that has, an established place of business in the Republic;

(a partnership; or

(iv) a trust;

"the Act" includes any provision of this Act as defined in the Customs and Excise Act, 1964 (Act No. 91 of 1964).

- (b)(i) Any reference in these rules to a "licensee" or "applicant for a licence" shall be deemed to include a reference to any person contemplated in the definition of person.
- (ii) Any reference to customs and excise laws and procedures in any form to which these rules relate shall be deemed to be a reference to customs and excise laws and procedures defined in paragraph (a).
- (c)(i) From the date these rules are published form DA 185 and the relevant annexure must be completed by an applicant for a licence or renewal of a licence.
- (ii) For the purpose of amplifying and updating licence files, licensees who or which are not required to renew licences annually must complete and submit to the Commissioner form DA 185 and the applicable annexure, obtainable from Controllers or the Commissioner, as soon as reasonably possible after the date of publication of these rules.
- (d) Where an annexure to form DA 185 does not provide for an application for a licence required under the Act, application must be made on the existing form prescribed therefor until an annexure to form DA 185 in respect of such licence is published in the Schedule to the rules.
- (e)(i) Application for a licence or renewal of a licence on form DA 185 and the relevant annexure must be submitted to the Commissioner and if approved, the licence will be issued by the Controller on furnishing of security and payment of the prescribed licence fee.
- (ii) The applicant must comply with all the requirements specified in the form, these rules, any relevant section of the Act, the Notes to the item in Schedule No. 8 in which the licence is prescribed, any other rule and any condition or obligation imposed by the Commissioner.
- (iii) No part of any licence fee is refundable on cancellation of a licence.
- (f) A separate licence is required for each type of activity in respect of which a licence is prescribed in the Act.
- (g) Under section 3, the duties that shall be performed and the powers that may be exercised, except the power to make rules, in respect of section 60 and these rules, are delegated to the Manager: Commercial Services, Customs and Excise.

60.02(1) Provisions of the Act relating to licensing and furnishing of security

- (a) The provisions in these rules apply generally to applicants for a licence and any licence issued under any provision of the Act.
- (b) Additional requirements in respect of an applicant for a licence or a licensee and premises where relevant are prescribed in the item of Schedule No. 8 in which such licence is specified, in the application form DA 185 and the relevant annexure or in the following sections or their rules:
- (i) 19, 21, 27 and 61 (customs and excise warehouse licence);
 - (ii) 36A (special customs and excise warehouse licence for goods liable to excise duty under Section B of Part 2 of Schedule No. 1);
 - (iii) 62 (agricultural distiller licence);
 - (iv) 63 (still licence);
 - (v) 64 (manufacture of wine in a special customs and excise warehouse);
 - (vi) 64A (container depot licence);
 - (vii) 64B (clearing agent licence);
 - (viii) 64C (licence to search wreck or search for wreck);
 - (ix) 64D (remover of goods in bond licence).
- (c) Any licence is issued subject to the relevant provisions of the Act, and the Notes to the item in Schedule No. 8 in which the licence is prescribed, these rules and any conditions which may be specified in such licence.
- (d)(i) Before any licence is issued, the applicant shall furnish such security as the Commissioner may require.
- (ii) The Commissioner may at any time require that the form, nature or amount of such security shall be altered or renewed.
- (iii) Any security furnished in the form of a surety bond must be in the form prescribed and shall be subject to the provisions of rules 120.08 and 120.09.

60.03(2) Persons who may apply for a licence

- (a) Subject to the provisions of the Act in which any requirement regarding licensing is specified, a person may apply for a licence if such person is—
- (i) a natural person who is—
 - (aa) a citizen or permanent resident of the Republic or has an established place of business in the Republic; and
 - (bb) at least 21 years old;
 - (ii) a juristic person—
 - (aa) incorporated in the Republic or if not incorporated in the Republic that has an established place of business in the Republic; and

- (bb) of which the majority of the directors or members, as the case may be, in the case of a juristic person incorporated in the Republic are citizens or permanent residents of the Republic;
 - (iii) a partnership or a trust composed of individuals each of whom meets the qualifications required in paragraph (a)(i);
 - (iv) the person having the effective management of any other association of persons whether or not formed in the Republic that has an established place of business in the Republic;
 - (v) in the case of—
 - (aa) a deceased estate, the executor of the estate;
 - (bb) an insolvent estate, the trustee.
- (b) An agent may not apply for a licence or renewal of a licence on behalf of an applicant.

60.04(2) Information regarding contraventions and other matters to be furnished on application form

- (a) For the purposes of section 60(2) every person applying for a licence must indicate on form DA 185 whether during the preceding five years any person to whom these rules relate—
- (i) has contravened or failed to comply with the provisions of the Act;
 - (ii) has failed to comply with any condition, obligation or other requirement imposed by the Commissioner;
 - (iii) has been convicted of any offence under the Act;
 - (iv) has been convicted of any offence involving dishonesty;
 - (v) has made any false or misleading statement in any material respect or omitted to state any material fact which was required to be stated in any application for a new licence or renewal of a licence or for any other purpose under the Act; or
 - (vi) was insolvent or in liquidation, as the case may be.
- (b) If the answer is "yes" to any question specified in paragraph (a), full details must be furnished with the application.
- (c) Any applicant may, where it is contended in respect of paragraph (a)(i) or (ii), that the contravention or failure was inadvertent, without fraudulent intent or gross negligence, include a submission to this effect with form DA 185.

60.05(2) Information regarding contraventions and other matters to be furnished after submitting the application or after licensing

- (a) Where any person to whom these rules relate, after submitting an application to licence or renewal of a licence or after licensing—
- (i) contravenes or fails to comply with the provisions of the Act;
 - (ii) fails to comply with any condition or obligation imposed by the Commissioner;
 - (iii) is convicted of any offence under the Act;
 - (iv) is convicted of any offence involving dishonesty;
 - (v) is sequestered or liquidated;

- (vi) no longer carries on the business for which the licence was issued;
 - (vii) is no longer qualified according to the qualifications prescribed in the rules,
the Commissioner must be informed of that fact within seven days of the occurrence of such event.
- (b) The provisions of rule 60.04(2)(c) shall apply *mutatis mutandis* for the purposes of paragraph (a)(i) and (ii)

60.06 Issue of a customs and excise client number

- (a) Whenever an application for a licence is approved, a customs and excise client number will be allocated and the applicant advised in writing.
- (b) The customs and excise client number must be—
 - (i) quoted in all communications to the South African Revenue Service or any other organ of state and reflected on all prescribed documents for transacting customs and excise business;
 - (ii) reflected in the authorisation for any agent to transact the business to which the licence relates for production to the Commissioner or the Controller, as the case may be.

60.07(2) Controller to be advised of any changed particulars

- (a) Whenever any of the particulars furnished in any application for a licence changes in any material way, the licensee shall advise the Controller within seven days of the occurrence of such event by submitting a form DA 185 and the relevant annexure reflecting the changed particulars.
- (b) In any case where in the opinion of the Commissioner the security is in any manner compromised by such change, the form, nature or amount of such security shall be altered as the Commissioner may require.

60.08(2) Keeping of books, accounts and documents

- (a) For the purposes of section 101 and notwithstanding anything to the contrary in any rule contained, every licensee must—
 - (i) keep proper books, accounts and documents and any data created by means of a computer, of all transactions relating to the activity in respect of which the licence is issued, for a period of five years calculated from the end of the calendar year in which any such document was created, lodged or required for the purposes of any customs and excise procedure;
 - (ii) include in such books, accounts and documents any requirements prescribed in any provision of the Act in respect of the activity for which the licence is issued;
 - (iii) produce such books, accounts, documents and data on demand at any reasonable time and render such returns or submit such particulars in connection with the transactions relating to the licensed activity as the Commissioner may require.
- (b) A licence is issued subject to the condition that the licensee or at least one of the licensee's employees permanently

employed at the premises where or from where the business will be conducted must have sufficient knowledge of customs and excise laws and procedures to ensure that the activities to which the licence relates are conducted efficiently and in compliance with the provisions of such laws and procedures.

60.09(2) Cancellation or suspension of licence

Whenever it is decided in terms of the provisions of section 60(2)(b) to—

- (a) cancel a licence; or
- (b) suspend a licence for a specific period,

the applicant or the licensee, as the case may be, shall be advised of such decision by a notice conforming with the contents of the following pro forma advice:

PRO FORMA ADVICE – Rule 60.09 (2)

Dear

RE: SUSPENSION OF LICENCE OR CANCELLATION OF LICENCE

After due and proper consideration of all the facts and circumstances it has been decided to suspend/cancel the licence, issued under the Customs and Excise Act, 1964 (the Act), with effect from (21 days notice in terms of the proviso to section 60(2)(b), except where an amount is unpaid for a period exceeding 30 days).

The reasons for the suspension/cancellation of the licence are the following:

NOTE: Here set out succinctly the reasons for example,

- (a) You were convicted of an offence involving dishonesty.
- (b) You failed to comply with the conditions of your licence.

etc.

You are hereby invited to make such representations setting out such facts and circumstances as to why you contend the licence should not be suspended/ cancelled within the period mentioned herein.

You are advised that you are entitled to have this decision reviewed by the Commissioner or the High Court.

Yours faithfully"

60.10(2) Licencing of removers of goods in bond: annexure DA 185.11 to form DA 185

The licencing of removers of goods in bond in respect of which annexure DA 185.11 is included in the amendment of the Schedule to the rules published on 1 March 2002 will commence when the rules for section 64D are published in the Gazette.