

CUSTOMS AND EXCISE ACT, 1964  
AMENDMENT OF RULES (NO. DAR/37)

Under sections 64B 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

By the substitution for rule 64B.01 of the following rules:

"64B.00 The number reflected in brackets after the rule number refers to the subsection to which the rule relates.

64B.01 (1, 2, 3, 4) Application for a licence and the conduct of business

(a)(i) The provisions of section 60 and the rules therefor, including the definitions, shall apply *mutatis mutandis* to the provisions in respect of a clearing agent's licence specified in section 64B and these rules and any applicant for such a licence must—

(aa) apply on form DA 185 and the relevant annexure and comply with all the requirements specified therein and in the rules and any additional requirements that may be determined by the Commissioner;

(bb) submit with the application a completed agreement in accordance with the pro forma agreement specified in these rules;

(cc) before a licence is issued, furnish the security the Commissioner may require.

(ii) Where any security is furnished in the form of a surety bond, such bond shall be subject to the provisions of rules 120.08 and 120.09.

(b) A licence issued under this paragraph authorises the transaction of business as a clearing agent in the control area of the Controller who issued and any Controllers listed on, the licence, only if at least one person at the business address of the clearing agent, for the duration of the licence—

(i) transacts business as a clearing agent at such address on a full-time basis;

(ii) meets the requirement of sufficient knowledge of customs and excise laws and procedures as contemplated in paragraph (c).

(c)(i) Until such time as the Commissioner prescribes a qualification as contemplated in section 64B(2)(c), sufficient

knowledge of customs and excise laws and procedures for the purposes of rule 64B.01(1, 2, 3, 4)(b) is established at any time during the validity of the licence where the clearing agent, if a natural person, or if any other person, any director or member, a person having the management of any association of persons or a partner or a trustee, as the case may be, or any permanent employee of such clearing agent, has conducted the business of a clearing agent or has been employed in such business, as the case may be, for at least five years or such shorter period as the Commissioner on good cause shown, may allow.

(ii) The names of the persons complying with the requirement of sufficient knowledge in the control area of each Controller where the clearing agent conducts business must be furnished with any application for, or renewal of, a licence.

(d) Every licensed clearing agent shall—

(i) at the premises where the business is transacted—

(aa) prominently display a sign bearing the business nature, registered and trading names of the business; and

(bb) a copy of the licence;

(ii) immediately notify the Controller of any change—

(aa) in the address of the business;

(bb) in the legal status of the business;

(cc) in the individuals who meet the knowledge requirement and who are employed full time by the licensee at the control area in respect of which the licence was issued.

(e) The Commissioner or a Controller may, on application by the licensee and on furnishing of such security as the Commissioner may require, endorse a licence to include the control area of a Controller not stated on the licence when it was issued.

**64B.02 (2,3, 4) Keeping of books, accounts and documents**

- (a) The rules for section 101 concerning the keeping of books, accounts and documents shall apply *mutatis mutandis*.
- (b) In addition to paragraph (a) clearing agents must keep—
- (i) records and books of account and banking records indicating all financial transactions made while transacting any business as a licensed clearing agent; and
  - (ii) copies of all correspondence, bills, accounts, statements and other documents received or prepared by a licensed clearing agent that relate to the transaction of business as a licensed clearing agent.
- (c) Every licensed clearing agent shall retain the records specified in paragraphs (a) and (b), notwithstanding any other provision in any rule contained, 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.

**64B.03 (6) Clearing agent must furnish documents and account for payments to the principal**

Every licensed clearing agent shall—

- (a) furnish his or her principal in respect of each transaction under the Act made on behalf of the principal with a copy of the customs documents, bearing the official customs stamps, or when section 101A comes into operation, a copy of the information transmitted or received by electronic communication as provided in that section, to and from the Commissioner, a Controller or any officer; and
- (b) promptly account to the said principal for payments—
- (i) received in favour of the said principal from the Commissioner, a Controller or any officer;
  - (ii) received from the said principal in excess of the duties and other charges due in respect of the principal's business with the Commissioner, a Controller or any officer; and
  - (iii) made to the Commissioner, the Controller or any officer in respect of the business of the principal.

**64B.04 (6) Disclosure of name of principal**

Whenever a clearing agent transacts any customs and excise business the principal, as defined in section 99(2), on whose behalf such business is transacted shall be disclosed whether such principal is a person inside or outside the Republic.

**64B.05 (6) Agreement to be furnished with application for a licence**

- (a)(i) A pro forma agreement is specified in this rule.
- (ii) Any expression in the pro forma agreement shall, unless the context otherwise indicates, have the meaning assigned thereto in the Act as defined in the rules for section 60 or in these rules.
- (b) The provisions of rule 60.09(2) shall apply *mutatis mutandis* in respect of the pro forma advice to be issued in respect of suspension or cancellation of a licence.

CUSTOMS AND EXCISE ACT, 1964 (ACT NO. 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 PO Box)

herein represented by

Full Name	Capacity
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- \*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 precondition 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 of 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, bank 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 640.03 of Schedule No. 6, the documents specified in Note 14 to item 640.03;
  - (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;
  - (gg) books, accounts and documents relating to the removal of goods in bond; and
  - (hh) 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 transactions 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: .....

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

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8. Thus done and signed at: ..... on this .....

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Licensee

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Witness

Thus done and signed at: ..... on this .....

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for and on behalf of Commissioner

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Witness"