



GUIDE FOR LICENSING OF CLEARING AGENTS

1. Purpose

- a) These Guidelines may be cited as 'Guidelines for the Licensing of Customs Clearing Agents, 2016', and shall come into force on the date of publication in the SRA website.
- b) The purpose of these Guidelines shall be to provide for the procedure for granting, renewal, suspension and termination of licenses for Customs Clearing Agents.

2. Definitions

“the Act” means the Customs and Excise Act, 1971

“applicant” means a person who applies for a license to the Commissioner General in terms of Section 60 of the Act as read with Section 99(3) of the Act and these Guidelines

“Commissioner General” means the Commissioner General of the Swaziland Revenue Authority appointed in terms of Section 15 of the Swaziland Revenue Authority Act, 2008

“license” means a license issued in terms of these Guidelines and Section 60 of the Act as read with Section 99(3) of the Act

“licensee” means a person issued with a license in terms of these Guidelines and Section 60 of the Act as read with Section 99(3) of the Act

“Minister” means the Minister responsible for Finance

“personnel” means persons employed by a licensee for the purpose of performing the obligations of the licensee in terms of the license

“Processing Fee” means a fee levied on every entry processed or transmitted to the Customs computer system using the communication network and includes any other fees or charges that may be levied by the Commissioner General for transacting Customs business with the SRA

“the Regulations” means the Customs and Excise Regulations, 1976

“SRA” means the Swaziland Revenue Authority

3. Introduction

Any person duly incorporated and registered in terms of the company laws of Swaziland is eligible to apply to the Commissioner General for a license to operate as a Customs Clearing Agent subject to Sections 60 and 99(3) of the Act

4. Lodgment of applications

- a) All applications for new licenses and renewals shall be made on form CE 185 and CE185.10;
- b) Applications must be fully completed and submitted to the Commissioner General;
- c) Applications for renewals of existing licenses shall be submitted on or before the 30th September each calendar year;
- d) Acknowledgements of applications shall be issued within 48 hours of receipt of the application;
- e) Decisions of approval or rejection of applications shall be issued within a month of the following quarter.

5. Decision on Applications

All applications for new licenses, renewals as well as suspensions and terminations of existing licenses shall, subject to Clause 4(e) be considered for approval by the Commissioner General.

6. Requirements for granting / renewal of license

- a) The Applicant shall make an application on the prescribed Form CE185;
- b) The Applicant shall have at least one qualified person of unquestionable integrity at each station of operation at all times. Only the qualified personnel will lodge/submit entries to Customs;
- c) The Applicant must be compliant with all tax types, and have such attributes as accuracy and strict observance of Customs laws and procedures.
- d) The Commissioner-General shall issue a license to a successful applicant in form CE102, subject to the Regulations.

NOTE:

Only properly completed forms shall be accepted. Any application with inaccurate or incorrect information or where any of the indicated personnel or Directors has been previously convicted of an offence under the Act by a competent court of law, or has persistently contravened any provision of the Act and/or the Regulations, shall not be accepted and shall be returned to the applicant.

7. Documentation to accompany application for a new license

- a) Applications by companies registered and incorporated in Swaziland shall be accompanied by the following documents:
 - i) Memorandum and Articles of Association;
 - ii) Certificate of incorporation;
 - iii) Copy of current Form J;
 - iv) Copy of current trading license;
 - v) Copy of current tax clearance certificate;
 - vi) Copies of Directors' identity cards or residence or work permits;
 - vii) Proof of physical address/lease agreement;
 - viii) Resolution by Board of Directors authorizing signatory to act on behalf of company; and
 - ix) Curriculum vitae with certified copies of educational and professional qualifications and the names of at least two references for all personnel employed by the applicant and who will be responsible for processing Customs transactions.
- b) Applications by sole traders shall be accompanied by the following documents:
 - i) National identity of the sole trader;
 - ii) Trading license of the sole trader;
 - iii) Curriculum vitae with certified copies of educational and professional qualifications and names of at least two references. If the sole trader is employing personnel to deal with customs transactions each person so employed by the sole trader must also produce these documents.

8. Documentation to accompany application for a renewal of a license

- a) Licensees shall be required to submit applications for renewal of their licenses three months before the expiry period of the license, that is, on or before the 30th September of each year.

- b) The application shall be accompanied by a Curriculum vitae with certified copies of educational and professional qualifications and the names of at least two references on all newly employed personnel or those not previously declared by the applicant.

9. Qualifications for personnel

- a) Personnel employed by the licensee shall be required to possess the following credentials:
 - i. At least 2 years' experience in customs related work;
 - ii. Passed the examination for customs clearing agents. The pass mark shall be determined from time to time at each examination sitting;
 - iii. Certificate as proof of having studied in matters related to the industry would be an added advantage;
 - iv. Certificate of accreditation issued by the SRA which shall be valid for a period of two (2) years subject to continued compliance with these Guidelines and the provisions of the Act and Regulations.
- b) Only personnel declared by applicants in their application and approved by customs shall deal in customs matters as clerks or officers. This shall include the submission of entries.
- c) Any person, employee or director who;
 - (i) has contravened or failed to comply with the provisions of this Act; or
 - (ii) has been convicted of an offence under this Act or has incurred a penalty under section 91; or
 - (iii) has been convicted of an offence involving dishonesty may , by such acts, be rendered ineligible for conducting any customs clearing business.

10. Trainings and Examinations

- a) The SRA or an authorized training institution, approved by the SRA, shall conduct trainings for Applicants and license holders twice per calendar year at its instance or on request by the Applicants or license holders,
Provided the minimum number of participants is ten (10) per training session;
- b) The trainings mentioned in (a) above shall be conducted at the expense of the participants;
- c) All conducted trainings shall be followed by qualifying examinations. However, examinations may be conducted, when requested, without personnel undergoing the training;
- d) Notwithstanding the provisions of (c) above, examinations to determine qualification of personnel may be held twice a year at the request of the license holders, and without necessarily undergoing the training.

11. Transfer of Personnel

- a) Transfer of personnel may be made at any time provided that-
 - i. The personnel transferred are current staff of the Applicant and are duly registered with the Commissioner General at the time of the transfer; and

- ii. The Commissioner General should be notified of all transfer of staff;

12. Bonds or Securities

- a) All licensees shall furnish security in terms of Section 99(3) of the Act by way of lodgment of a bond of E20 000.00 underwritten by a financial institution or insurance company registered in Swaziland;
- b) The security or bond amount shall be subject to review by the Commissioner General from time to time either generally or specifically in respect of particular licensees as determined by the perceived risk of non-compliance by that licensee;
- c) The Commissioner General shall at all material times reserve the right to fully exercise his power under the Act as regards the provision for security or bonds and the calling in of the said bonds where the Commissioner General deems this necessary or expedient to safeguard revenue;
- d) Only financial institutions or insurance companies registered in the Kingdom of Swaziland shall be acceptable as guarantors/sureties for licensees.

13. Notification of Company changes

Any change in the company structure, directorship of the licensee, should be notified to the Commissioner General by presenting a copy of the current Form 'J'.

14. Suspension

A license shall be suspended where either the licensee or its personnel:

- a) Has contravened or failed to comply with the provisions of the Act or Regulations; or
- b) Has been convicted of an offence under the Act or has been found to have repeatedly committed serious contraventions of the Act dealt with under the Administrative procedures provided for in section 91 of the Act; or
- c) Has been convicted of an offence involving dishonesty.

15. Termination

A license shall be terminated where the licensee or personnel:

- a) Has contravened or failed to comply with the provisions of the Act or Regulations; or
- b) Has been convicted of an offence under the Act or has been found to have repeatedly committed serious contraventions of the Act dealt with under the Administrative procedures provided for in section 91 of the Act; or
- c) Has been convicted of an offence involving dishonesty; or
- d) At the request of the licensee.

16. Notification for suspension and termination

- a) Where the Commissioner General intends to suspend or terminate a license, he shall first –

- i. notify the licensee of the proposed suspension or termination and the reasons for the proposed suspension or termination; and
 - ii. give the licensee an opportunity to submit representations on the proposed suspension or termination within 7 days.
- b) Notwithstanding the provision of paragraph 16 (a) above no notification for the suspension of a license shall be given where such suspension results from non-payment of processing fees that may be due;
- c) Where the Commissioner General decides to suspend or terminate a license, he shall –
 - i. notify the licensee of the decision indicating the period for which the license is suspended or the date from which the license is terminated; and
 - ii. in the notification, draw the licensee's attention to the fact that an appeal may be lodged against the decision in terms of Section 60 (2) of the Act.
- d) Where a license is suspended, the minimum period of suspension shall be three (3) months. However, this requirement does not apply where the suspension is due to non-payment of processing fees. Such suspension will be lifted immediately upon receipt of acceptable proof of payment of the outstanding fees.
- e) Subject to the provisions of Clause 15(d), where a license has been terminated, a new application may only be made after a minimum period of twenty four (24) months. A new application pursuant to a notice of termination in terms of clause 15(d) shall be made after a minimum period of three (3) months from the date of termination.

17. Consequences of suspension or termination of licenses

- a) From the date on which a license suspension or termination takes effect the licensee shall no longer carry on the activity for which he was licensed and his access to the Customs computer system will be disabled.
- (b) In the case of the suspension of a license, paragraph (a) shall apply during the period for which the license was suspended.
- (c) The Commissioner General may, despite paragraph (a), and on such conditions as he may determine, including conditions relating to the provision of security, allow the affected person to continue with the activity for a period necessary to wind up that activity, or, in the case of a suspension, to bring that activity to a halt.

18. Transfer of licenses

A license shall not be transferred.

19. Notification of Licensees and Suspension and Termination of Licenses to the Public

The Commissioner General shall issue a notification to the general public on the SRA website of the list of licensees and the suspension or termination of licenses.

20. Appeals

The Applicant or licensee as the case may be, may appeal to the Minister against any decision of the Commissioner General relating to the refusal, suspension or termination of a license.

21. Amendment of the Guidelines

These Guidelines shall be amended from time to time by the Commissioner General as the case may be, and subject to any consultations that may be deemed necessary.

ANNEX I
Offences and Penalties
(Under Clauses 4, 8, 14 and 15)

1. The following offences shall be considered sufficient to warrant the non-renewal, suspension or termination of licenses for Customs Clearing Agents:

Part A: Renewal of licenses for Customs Clearing Agents

Description of Offence		Penalty
1.	Submission of applications for renewal of licenses after the 30 th September, but before the 31 st October of each license year	E1, 000.00 subject to payment being made on or before the 31 st October of the respective license year
2.	Submission of applications for renewal of licenses after the 31 st October, but before the 30 th November of each license year	E1, 500.00 subject to payment being made on or before the 30 th November of the respective license year
3.	Submission of applications for renewal of licenses after the 30 th November, but before the 31 st December of each license year	E2, 000.00 subject to payment being made on or before the 31 st December of the respective license year
4.	Submission of applications for renewal of licenses after the 31 st December of each license year	Suspension of the Clearing Agent License in terms of Clause 17(a) and payment of E2, 500.00. The suspension shall persist until payment of the penalty, otherwise the license shall be terminated if payment of the penalty is not made on or before the 31 st March of the succeeding license year

Part B: General offences relating to Customs Clearing Agents

Description of Offence		Penalty
1.	Incorrect use of other client's (importer, exporter, manufacturer, licensee, remover of goods in bond or any principal)	Penalty of 25% of the value of the goods, with a maximum of E10, 000.00
2.	Submission of incomplete documentation of any kind and in relation to anything done under these Guidelines or the Act	Penalty of 25% of the value of the goods, with a maximum of E10, 000.00
3.	Lodgment of clearance declarations and failing to finalize clearance process in relation thereto	Penalty of 25% of the value of the goods, with a maximum of E10, 000.00
4.	Submission of incorrect or false invoices	Penalty of 25% of the value of the goods, with a maximum of E25, 000.00
5.	Submission of forged documents of any kind and in relation to anything done under these Guidelines or the Act	Penalty of 25% of the value of the goods, with a maximum of E25, 000.00
6.	False declaration of any kind	Penalty of 50% of the value of the goods, with a maximum of E25, 000.00
7.	Misrepresentation of information or any fraudulent acts in relation to the origin, valuation or tariff classification of goods	Penalty of 50% of the value of the goods, with a maximum of E50, 000.00
8.	Non-acquittal of clearance declarations within the period stipulated in the Act relating to the transit of goods	Penalty of 25% of the value of the goods, with a maximum of E10, 000.00
9.	Facilitating or soliciting, or perpetrating the commission of fraudulent acts or falsification of documents or information relating to anything done under these Guidelines or the Act	Penalty of 50% of the value of the goods, with a maximum of E75, 000.00

2. The offences and penalties specified in paragraph 1 above shall apply specifically to Licensees as defined in Clause 2 of these Guidelines, subject to the signing of the formal election specified in Annex II by the Licensee to be dealt with administratively by the Commissioner General.

3. The application of this Annex shall not deter or be a bar to the Commissioner General to deal with the importer, exporter, manufacturer, licensee, remover of goods in bond, or any principal for any breach of the provisions of the Act.

ANNEX II

Formal Election to be dealt with Administratively

**ACKNOWLEDGEMENT OF RECEIPT OF NOTICE OF A CONTRAVENTION OF THE
GUIDELINES FOR THE LICENSING OF CUSTOMS CLEARING AGENTS AND THE
PROVISIONS OF THE CUSTOMS AND EXCISE ACT, 1971 OR CUSTOMS AND EXCISE
REGULATIONS, 1976**

(Ref: _____ dated _____)

I/We _____ being the _____

and the duly authorised signatory of _____

hereby acknowledge receipt of the above mentioned Notice of a Contravention of the provisions of the Guidelines for the Licensing of Customs Clearing Agents and the provisions of the Customs and Excise Act, 1971, or Customs and Excise Regulations, 1976 mentioned hereunder:

1. Clause _____ of the Guidelines for the Licensing of Customs Clearing Agents;
2. Section _____ of the Customs and Excise Act, 1971; and/or,
3. Regulation _____ of the Customs and Excise Regulations, 1976.

Further, I hereby elect to have the matter referred to in the said Notice to be summarily determined by the Commissioner General of the Swaziland Revenue Authority in terms of section 91 of the Customs and Excise Act, 1971.

I understand the consequences of this election and confirm that I accept to be bound by the Commissioner General's decision.

Signed: _____

Date: _____