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## ACT NO. 6 OF 2021

**Customs and Excise (Amendment) Act, 2021**

An Act to amend the Customs and Excise Act, 1982<sup>1</sup>.

Enacted by the Parliament of Lesotho.

**Short titles and commencement**

1. This Act may be cited as the Customs and Excise (Amendment) Act, 2021 and shall come into operation on the date of its publication in the Gazette.

**Insertion of new sections**

2. Section 40 of the Customs and Excise Act, 1982 (herein referred as principal Act) is amended by inserting the following sections immediately after subsection (4) -

**“Use of computer systems for Customs processing purposes**

40.A (1) The Commissioner General shall, when clearing imported or exported goods, use a computer system for electronic processing of declarations at the ports of entry.

(2) The Commissioner General shall, when clearing imported or exported goods pursuant to subsection (1), designate border posts where a computer system for electronic processing of declarations shall be used.

**Registration, suspension and cancellation of computer system users**

40.B (1) A person who intends to submit a declaration for imports and exports of goods using a computer system shall submit, in writing, an application for registration to the Commissioner General.

(2) The Commissioner General shall consider the application made pursuant to subsection (1) and approve or refuse the application.

(3) Where the Commissioner General approves the application made pursuant to subsection (1), he shall -

- (a) notify the applicant in writing of the approval;
  - (b) register the applicant as registered user; and
  - (c) issue a user access codes to the applicant.
- (4) The user access code issued in terms of paragraph (3) shall -
- (i) be unique to the registered user;
  - (ii) be capable of verification;
  - (iii) be under the sole control of the registered user; and
  - (iv) conform in all respects to the requirements prescribed by the Commissioner General.

(5) Where the Commissioner General refuses the application made pursuant to subsection (1), he shall notify the applicant, in writing, of the refusal.

(6) The Commissioner General may suspend, for a specified period, any registration if the registered user or the employee of the registered user -

- (a) is sequestered or liquidated;
- (b) no longer carries on the business for which the access code was issued;
- (c) is no longer qualified according to the qualifications prescribed in the Regulations to this Act;
- (d) fails to meet, in respect of the computer system used, all the compliance requirements and the operational standards;
- (e) failed to comply with any condition or obligation imposed by the Commissioner General in respect of the registration; or

- (f) fails to comply with any other requirements of the Commissioner General

(7) Where a registered user has failed to comply with the conditions specified under subsection (6), the Commissioner General shall, before the suspension of registration -

- (a) notify the registered user of the proposed suspension;
- (b) give the registered user reasons for the suspension;
- (c) provide the registered user with the opportunity to respond and make representations as to why the registration should not be suspended.

(8) The Commissioner General shall cancel the registration approved pursuant to subsection (3) if the registered user or the employee of the registered user -

- (a) has made a false or misleading statement or omits to state the requirements to be stated in the application for registration;
- (b) has contravened or failed to comply with the provisions of this Act;
- (c) has been convicted of an offence under this Act;
- (d) has been convicted of an offence involving dishonesty; or
- (e) has failed to comply with any condition or obligation imposed by the Commissioner General in respect of such registration.

(9) Where the Commissioner General registers a person, suspends a registration or cancels a registered user pursuant to this section, the registration, suspension or cancellation shall have effect from the date on which the applicant or registered user is notified of the registration, suspension or cancellation.

(10) A person who is issued with a user access code shall only use the access code issued to him and not allow any other person to use the code unless the person is in his employment or he has obtained the Commissioner General's authority.

(11) A person who contravenes subsection (10) commits an offence and liable on conviction to a fine not exceeding fifty thousand Maloti or imprisonment for a period of five years or both.

#### **Validating and assessing Electronic Declarations**

40.C (1) Where a registered user submits electronic declarations made pursuant to this Act, the Commissioner General shall acknowledge receipt of electronic declarations by sending a customs reference number to the registered user.

(2) The registered user shall, where the electronic declarations made pursuant to this Act, require payment, make payment to the Commissioner General.

(3) Where the Commissioner General acknowledges receipt of electronic declarations and payment made, he shall process goods for clearance for home use or any other customs procedure.

(4) Where the Commissioner General accepts and approves the electronic declaration made pursuant to subsection (3), he shall clear goods for home use or any other customs procedure and issue exit note for import and export.

(5) The Commissioner General shall, where he identifies errors during processing of goods, notify the registered user of the error.

(6) Where an error is identified pursuant to subsection (5), the registered user shall request the Commissioner General to amend the electronic declaration.

(7) The time of receipt of an electronic declaration shall be when the electronic declaration enters the computer system established by the Commissioner General at any Customs office to which it was addressed, and such office shall be the place of receipt.

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**Fees and charges for electronic declarations**

40.D The Commissioner General may impose by regulations to this Act, fees and charges for registered users who may import or export goods using electronic declarations.

**Use of access code**

40.E (1) A registered user who is issued with an access code may apply to the Commissioner General for issuance of more than one access code.

(2) Where a registered user or any of the employees no longer uses an access code in furtherance of the functions of a registered user's business, the registered user shall inform the Commissioner General in writing to revoke such access code.

**Unlawful use of Access code**

40.F (1) No person shall use an access code assigned to the registered user unless he is authorised by the registered user.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding twenty thousand Maloti or imprisonment for a period not exceeding two years.

**Admissibility of any electronic codes**

40.G Where there are proceedings, prosecution or disputes in the courts of law and the Commissioner General is required to present evidence in relation to electronic declarations, the admissibility of such electronic declaration, shall not be denied on the grounds that it is -

- (a) an electronic data message; or
- (b) not in original form.

**Unavailability of computer systems**

40.H (1) Where the computer system is not available -

- (a) a registered user shall submit declarations manually; and
- (b) the Commissioner General shall process declarations manually.

(2) The Commissioner General may require the registered user who previously transmitted electronic declarations manually when the computer system was unavailable to submit original documents for the processing and clearance of goods.

#### **Safe keeping of electronic declarations**

40.I The Commissioner General shall keep and maintain electronic declarations submitted pursuant to section 40C in the computer system for a period of five years, in the format it was originally generated, submitted or received.

#### **Interpretation**

40.J For the purposes of sections 40.A, 40.B, 40.C, 40.D, 40.E, 40.F and 40.G

“**access code**” means user name and password issued to the registered user

“**computer system**” means a device or collection of devices, including input and output devices and capable of being used with external files which contain computer programmes, electronic instructions, input and output data that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

“**data**” means a representation of information, knowledge, facts, concepts or instructions which are being or have been prepared in a formalised manner and is intended to be processed, is being or has been processed in a computer system or network and may be in any form (including computer printouts, magnetic optical storage media, punched cards and punched tapes) or stored internally in the memory of the computer;

“**registered user**” means a person registered in terms of the provisions of this Act.

**Insertion of new section**

3. Section 47 of the Principal Act is amended by inserting the following section immediately after subsection (5):

**“Determination of origin of goods**

47.A (1) The Commissioner General shall, in determining the origin of goods under this Act, consider rules of origin in respect of agreements that Lesotho is a party to.

(2) The Commissioner General shall determine, as and when necessary, the origin of goods irrespective of whether goods are -

- (a) dutiable or not dutiable;
- (b) cleared;
- (c) released; and
- (d) subject to customs control.”.

**Insertion of new section**

4. Section 51 of the Principal Act is amended by inserting the following section immediately after subsection (3) -

**“Customs co-operation with other countries**

51A. (1) The Commissioner General may, enter into an agreement with the customs administration of another country in order -

- (a) to provide for customs co-operation, including the exchange of customs information between the Lesotho Revenue Authority and another customs administration;
- (b) to facilitate the customs processing of goods -
  - (i) imported into Lesotho;
  - (ii) exported from Lesotho; and



- (c) to allow -
  - (i) customs officers of the customs administration of another country which Lesotho has agreement with, to perform functions in Lesotho necessary for the enforcement of the customs legislation of another country in respect of goods to be exported from Lesotho to another country; and
  - (ii) customs officers of the Lesotho Revenue Authority to perform functions in the country which Lesotho has agreement necessary for the enforcement of this Act, or any legislation in respect of goods to be exported from Lesotho to another country.
- (2) The Commissioner General may make rules to -
  - (a) give effect to any agreement in terms of subsection (1);
  - (b) provide for customs officers of the country which Lesotho has agreement with to perform functions referred to in subsection (1)(c)(i) in Lesotho."

#### **Insertion of new sections**

5. Section 66 of the Principal Act is amended by inserting the following section immediately after subsection (4):

#### **"Applications for accreditation status**

66.A (1) A person who is registered and licensed as an importer or exporter of goods may apply to the Commissioner General for the accreditation status.

- (2) The application made pursuant to subsection (1) shall -
  - (a) be made on the prescribed application form;
  - (b) contain such information as may be required by the

- (c) Commissioner General;  
be signed by the applicant; and
- (d) be accompanied by such supporting documents and information as may be determined by the Commissioner General.
- (3) The Commissioner General may, after considering the application made pursuant to subsection (1), approve the application, grant the accreditation status and issue the accreditation certificate with such terms and conditions as may be prescribed in the Regulations to this Act.
- (4) The accreditation certificate issued in terms of subsection (3) shall -
- (a) be valid for a period of three years from the date of issue.
- (b) be as prescribed; and
- (c) not be transferrable.
- (5) Where the accreditation is granted in terms of subsection (3), the Commissioner General shall determine the level of accreditation status conferred on the applicant.
- (6) The Commissioner General shall, in determining the level of accreditation status conferred, consider the following:
- (a) a record of compliance with this Act, the Value Added Tax Act, 2001 and Income Tax Act, 1993 during a period of between two to five years preceding the date of the application;
- (b) an effective accounting, recordkeeping and operational system consistent with the generally accepted accounting practice;
- (c) an effective accounting, recordkeeping and operational system capable of complying with accredited client requirements;

- (d) knowledge, competency and skills to comply with accredited client requirements prescribed in the regulations to this Act;
- (e) sufficient financial resources to comply with accredited client requirements prescribed in the regulations to this Act; and
- (f) any other requirement that he may consider necessary for the purpose of this section.

(7) Where the person who has made an application pursuant to subsection (1) -

- (a) does not comply with the provisions of this Act, the Value Added Tax Act, 2001, Income Tax Act, 1993 and any other legislation applicable to the importation or exportation of goods;
- (b) does not meet the requirements for accredited client status;
- (c) has made a false or misleading statement in the application or any supporting document;
- (d) has omitted to state a fact, which is material to the consideration of the application; or
- (e) has not paid any duty or tax payable;  
the Commissioner General shall refuse to approve an application.

#### **Communication of decisions on applications**

66.B (1) Where the Commissioner General approves the application for the accreditation status, he shall notify the applicant of his approval of the application and set out any special conditions in respect of which the accredited client status is approved.

(2) The Commissioner General shall, where he refuses to approve

the application for the accreditation status -

- (a) notify the person in writing about his decision and reasons for refusing the application;
- (b) request the person to submit representation within seven days of receipt of notice of decision; and
- (c) inform the person that he may appeal against the Commissioner General decision.

#### **Renewal of accreditation certificates**

66.C The holder of an accredited client certificate shall, not later than thirty calendar days before the certificate expires, apply for the renewal of the certificate.

#### **Amendment of accreditation certificates**

66.D (1) The accreditation certificate issued pursuant to this Act shall be amended -

- (a) on application by the holder of the certificate;
  - (b) by the Commissioner General where he considers it necessary -
    - (i) to extend or limit the purposes for which the certificate was issued;
    - (ii) to update or change any detail on the certificate;
    - (iii) to correct a technical or editorial error;
    - (iv) to change, remove or substitute any condition to the certificate; or
    - (v) to raise or lower the level of accreditation.
- (2) The Commissioner General shall, before amending the accredi-

tation certificate pursuant to subsection (1) -

- (a) notify the holder of the certificate about the proposed amendment; and
- (b) the reasons for the proposed amendment;
- (c) give the holder of the certificate an opportunity to submit representations on the proposed amendment within thirty calendar days of receipt of a notice of the proposed amendment; and
- (d) inform the holder of the certificate that he may appeal against the Commissioner General's decision.

(3) An amendment to the accreditation certificate issued shall take effect on a date that shall be determined by the Commissioner General.

#### **Suspension or cancellation of accreditation certificates**

66.E (1) The Commissioner General shall suspend the accreditation if a person -

- (a) acquired the accreditation certificate under false and misleading information;
- (b) is no longer entitled to accreditation certificate in terms of this Act;
- (c) is sequestrated or liquidated;
- (d) is no longer engaged in the activity for which the accreditation certificate was issued; or
- (e) is in breach of this Act, the Value Added Tax Act, 2001 or the Income Tax Act, 1993.

(2) The Commissioner General may suspend the accreditation certificate issued in terms of section 66.A (3) where the person -

- (a) is in breach of the terms and conditions of the certificate;
- (b) fails to pay to the Commissioner General duties and taxes fourteen days after due date; or
- (c) is in breach of a provision of this Act, Income Tax Act and any other legislation applicable to the importation or exportation of goods.

(3) The Commissioner General shall, before he suspends or cancels the accreditation certificate -

- (a) notify the person in writing about his decision and reasons for the suspension or cancellation of his certificate;
- (b) notify the person of the period for which the certificate is suspended;
- (c) notify the person of the date from which the certificate is cancelled;
- (d) inform the person that he may appeal against the Commissioner General's decision; and
- (e) give the person an opportunity to submit representations on the proposed suspension or cancellation within thirty calendar days of receipt of the a notice of the suspension or cancellation.

(4) A person who is issued with the accreditation certificate shall return the certificate to the Commissioner General where it is withdrawn.

(5) A person who contravenes subsection (4) commits an offence and liable on conviction to a fine not exceeding fifty thousand Maloti or imprisonment for a period of five years or both.

**Benefits of accreditation**

66.F (1) The Commissioner General may, by Regulations to this Act prescribe benefits for persons on whom the accredited client status has been conferred.

(2) Different benefits may be prescribed in terms of subsection (1) for different levels of accredited client status.”.

**Insertion of a new section**

6. Section 79 of the Principal Act is amended by inserting the following section immediately after subsection (3) -

**“Imposition of administrative penalties**

79.A (1) Where a person has committed an act not described as an offence, but amounts to non-compliance, the Commissioner General may impose an administrative penalty for such an act of non-compliance prescribed by the Minister in the Regulations to this Act.

(2) Where the Commissioner General imposes administrative penalty pursuant to subsection (1), he shall issue a notice indicating an amount of administrative penalty imposed.

(3) The administrative penalty imposed pursuant to subsection (1) shall be paid within fourteen days of receipt of the notice.

(4) The person who is liable to administrative penalties imposed pursuant to subsection (1) is not absolved from payment of duty, tax and any other debt accrued from any liability from this Act, Value Added Tax Act or Income Tax Act.”.

**NOTE**

1. Act No. 10 of 1982.

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**GOVERNMENT NOTICE NO. 16 OF 2021****The Parliament of Lesotho****Statement of Objects and Reasons of the  
Customs and Excise (Amendment) Act, 2021**

**(Circulated by the authority of the Minister responsible for Finance  
Honourable Sophonea Thabo)**

The object of this Bill is to amend the Customs and Excise Act No.10 of 1982 as amended in order to adapt to best international practices.

The object of the Bill is to comply with international instruments such as the Preferential Trade Agreement (PTA) between Southern African Customs Union (SACU) and the Common Market of the South (MERCOSUR), known as the SACU-MERCOSUR PTA, the Economic Partnership Agreement (EPA) between Southern African Development Community (SADC) and the European Union (EU), known as the SADC-EU EPA, and the Trade Facilitation Agreement (TFA) which entered into force on 22 February 2017. In order to implement the first two agreements the Bill gives the Commissioner General power in determining the origin of goods, in accordance with the rules of origin provided for under these agreements. The third instrument is mainly on trade facilitation. The Bill therefore grants the Commissioner General power to enter into agreements with other customs administrations in order, amongst others, to provide for co-operation, including exchange of customs information and facilitation of customs processes.

The Bill further provides for new and modern customs initiatives, such as the Preferred Trader Scheme, commonly known as Accreditation. It is a scheme meant to promote compliance by reducing inspection costs to trade and minimising delays associated with import and export inspection and other processes. It provides for a process of issuance of a certificate from registration of applicants for those who qualify up to a stage where the Commissioner General may suspend or cancel the certificate in case of non-compliance or abuse of the system. As an incentive to those who comply, the Commissioner General shall provide benefits that may change from time to time.

The Bill also introduces Administrative penalty concept, where the Commissioner General shall impose penalties to traders that have committed minor of-



fences that are not necessarily provided for in the Bill as offences. These are non-compliance acts that would not necessarily lead to prosecution in the courts of law.

The Bill further gives the Commissioner General power to establish a computer system for processing of declarations at ports of entry. The system shall be used by registered users only.