

REVENUE SERVICES LESOTHO GUIDELINES



CLEARING AGENTS: LICENSING AND ADMINISTRATION

Core Operations

(March 2023)

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1. Key Definitions and Acronyms

For clarity and uniformity in understanding this document, unless otherwise stated or required, the following meanings shall apply;

- “The Act”** Customs and Excise Act No.10 of 1982
- “ASYCUDA”** Automated System for CUstoms Data.
- “Customs Clearing Officer/Clerk”** A natural person or employee, given the responsibility of carrying out clearing tasks on behalf of the clearing agent.
- “Client”** The person on whose behalf goods are being cleared for Customs purposes. It can mean the Exporter or Importer depending on the context in this document.
- “CG”** Commissioner General of Revenue Services Lesotho.
- “Customs Clearance”** documented permission/authorisation (by either e-mail, electronic messaging or other written communications media) granted by a Customs Authority to either a Clearing Agent, Importer or Exporter enabling them to import goods into the country, or to export goods out of the country . Permission/authorisation normally means all customs formalities have been complied with, all applicable duties have been paid and shipment approved for release into home consumption.

“Customs Clearing Agent”

Any natural person or juristic entity who for a specified fee, acts in customs related matters for or on behalf of an importer or exporter, and is a holder of a valid license issued by Revenue Services Lesotho, enabling them to perform any function under, or complying with any requirements of the Act.

‘Exporter’

includes any person who, at the time of exportation:

- a. Owns or is the title holder for any goods exported;
- b. Carries the risk of any goods exported;
- c. Represents that or acts as if he is the exporter, owner or title holder of any goods exported;
- d. Actually takes or attempts to export any goods across the international borders of Lesotho;
- e. Is beneficially interested in any goods exported;
- f. Acts on behalf of any person referred to in paragraph a., b., c., d., or e., and in relation to imported goods may include the manufacturer, supplier or shipper of such goods or any person inside or outside Lesotho representing or acting on behalf of such manufacturer, supplier or shipper.

“Importer”

includes any person who, at the time of importation:

- a. Owns or is the titleholder of any goods imported;
- b. Carries the risk of any goods imported;
- c. Represents that or acts as if he is the owner of any goods imported;
- d. Actually imports any goods into Lesotho;
- e. Is beneficially interested in any goods imported;

“RSL”

- f. Acts on behalf of any person referred to in paragraph a., b., c., d., or e. Revenue Services Lesotho as operationalized by the Lesotho Revenue Authority (Amendment) Act, 2022;

“Person”

includes a natural person or a juristic entity including but not limited to partnerships, companies, trust’s and any other recognized business legal entity.

2. Introduction

Licensing of Customs Clearing Agents is an ongoing and important regulatory practice necessary for the efficient and effective performance of the smooth expedition of duties carried out by Clearing Agents, and an efficient monitoring tool by the relevant tax authorities. The practice has however seen some shortcomings; which have over time resulted in significant frustration, concerns and issues to the parties involved in the clearing process being the clearing agents and Revenue Services Lesotho. The provisions of the current Customs and Excise Act cannot adequately address these issues alone resulting in the need for the review of the current administration and the entire licensing practice.

3. Objective

The objective of these Guidelines is to provide a clear regulatory framework that provides for the efficient and effective administration and licensing of Customs Clearing Agents and prospective agents pertaining to their regulatory duties, the expectations by RSL pursuant to published legal obligations and the clearing agents' responsibilities.

4. Scope

The subjects covered within this regulatory framework include as a primary scope as follows;

- Registration and Licensing requirements and obligations,
- Control procedures,
- Performance management and monitoring including suspension and cancellation of Licenses in line with Customs & Excise regulations and guidelines.

5. The Law

Before any person can perform the functions of a Customs Clearing Agent, which include preparing and submitting any import or export customs entries relating to any goods on behalf of an importer or exporter for a specified fee, such person should be licensed for the purpose. This is in alignment with international best practices to which the Act is aligned, particularly section 66 (1) therein. Upon meeting licensing requirements that should be imposed in line with section 66 (2) of the Act, RSL may license a person applying for licensing as a Customs Clearing Agent.

6. Licensing Requirements

Specified below are the requirements and corresponding obligations, relating to licensing of Customs Clearing Agents.

6.1 Requirements

6.1.1 Application Requirements

- a)** Any person can apply for registration and licensing as a Customs Clearing Agent. In order to be considered, registered and licensed as a Clearing Agent, a person should meet the following requirements;;
- i. Be a citizen or a permanent resident of Lesotho in the event of a natural person;
 - ii. Be a resident of Lesotho for tax purposes;
 - iii. Have a registered business and physical office in Lesotho even if the company is foreign owned;
 - iv. Have not, in the previous two years, been in violation, conviction or contravention of the provisions of the Customs and Excise Act, Income Tax Act No.9 of 1993 and Value Added Tax Act No 9 of 1991 and any other relevant revenue Laws;
 - v. Should be able to pay the required security bond ,
 - vi. Have proof of good credit history, at least for a year prior to application
- b)** A person should submit the following application documentation;
- i. A completed application Form, CE 185.10 (available here <http://www.rsl.org.ls>), with the following attachments as may be applicable to the type of business entity;
 - A certificate of incorporation from the Registrar of Companies,
 - Memorandum and Articles of Association,
 - Deed of Partnership,

- ii. A certified copy of Identity Document or Passport (page with picture and holder's details) of the Owner, Directors, Partners etc.
- iii. Company business profile;
- iv. Proof of citizenship or permanent residency in Lesotho;
- v. Proof of physical address of the business;
- vi. The most current bank statement from a local bank for the past 3 months on the date of application;
- vii. Proof of good credit history as obtained from at least 2 credit references e.g. banks provided such person is already in business;
- viii. Proof of educational qualification of Customs Clearing Clerk (s) and nominated member of the Management team.

6.2 Evaluation

Upon receipt of the above-mentioned documents, the Commissioner Core Operations will evaluate the following requirements in regard to the application;

a) Management Team Competency

At least one member of the management team must have;

- i. at least a Diploma in Business Management or equivalent plus 1 year experience in Customs operations or
- ii. Customs clearing experience of at least 5 years and

- iii. passed Customs competency test for Managers (i.e. directors/partners/owners) conducted by RSL.

b) Customs Clearing Clerk(s) Competency

The Customs Clearing Clerk should satisfy the following criteria;

- i. Have at least L.G.C.S.E or equivalent as a minimum qualification and be computer literate (Basic computer skills);
- ii. Must have passed the Customs competency test for Customs Clearing Clerks conducted by RSL.

The Customs competency test shall be both oral and or written. It is intended to assess the incumbent's knowledge of Customs law and technical management. It is related but not limited to Tariff Classifications, Rules of Origin, Customs Valuation Principles and Procedures. A minimum pass mark of 70% should be attained for one to be considered successful. The candidate is given three (3) chances of sitting for this test, not less than three (3) months following the previous one, failure of which renders the person disqualified for a period of 2 years. The sittings for Customs competency test are pre-scheduled and conducted quarterly throughout the year.

c) Vetting of the applicant

Subsequent to passing of the Customs competency test, the applicant shall be subjected to vetting by RSL Internal Affairs office. Only applicants who pass the vetting process will be considered for licensing.

6.3 Post Evaluation

a) Physical Inspection of the Business Premises

Following successful vetting and testing of the Management team member and the clearing Clerk(s), the physical address (business operating offices) as provided at the application stage shall be confirmed through a physical inspection and/or physical visit to the premises.

The following are required;

- i. Business premises of the proposed Customs Clearing Agency should have minimum sufficient resources to ensure diligent discharge of its responsibilities and obligations as follows:
 - Reliable computers and internet, to enable access to ASYCUDA as well as the ability to archive required documentation.
 - Clearance tools such as Harmonized System and HS reference materials (e.g. Explanatory notes), etc.

b) Payment of Surety Bond

All successful applicants will be notified in writing for payment of a surety bond. The bond must be duly signed and guaranteed by a local commercial bank or insurance company. .

The form, nature and amount of such security bond may be determined and reviewed from time to time by RSL based on the following requirements;

- i. General tax compliance status of the licensee including Income tax and Value Added Tax return filing and tax payment(s) history;

- ii. The track record in respect of due diligence in undertaking the Customs clearance work; based on, error rate, timelines of response to queries and others as may be determined;

c) Licensing-Authorization

This is the last stage of the application process for a clearing agent where RSL issues successful applicants with licenses for Customs clearing. A license fee as prescribed in schedule 8 of the tariff book or as determined by RSL Management is payable.

d) Process of applying for authorization and approval to submit declarations in ASYCUDA

The clearing agent should fill IT access Form (available here <http://www.rsl.org.ls>) for system rights with the following attachments;

- i. Letters of results of the nominated manager and clearing clerk(s) who have sat and passed the Management and Customs competency test as applicable;
- ii. Passport copy (picture and information page);
- iii. Passport size photo.

This applies to both new applicants and re-instatements.

6.4 Transitional Requirements

This section relates to employees, shareholders or directors of the agencies who were issued with ASYCUDA clearance pass codes without undertaking and passing the Customs competency test including those who were issued with the ASYCUDA passcodes during ASYCUDA introduction, testing and piloting. It also relates to the Customs Clearing Agents who no longer have certified clearing clerk(s) under their employment.

The managing directors, managers or owners of the Customs Clearing Agencies will be allowed to notify the Commissioner Core Operations of the above mentioned categories of people. Those who have ASYCUDA passcodes without having set for and passed Customs competency test will be given the opportunity to sit for the test as scheduled and attain a pass mark of at least 70%. Should they not be successful the ASYCUDA pass codes and where necessary, clearing agency licenses will be revoked. Such clearing agents will be given a chance to start the registration and licensing process as if they were new applicants.

ASYCUDA passcodes that will be found not to be allocated to eligible people shall be revoked as soon as RSL becomes aware of their existence.

7. Obligations of the Clearing Agents

- (i)** Customs Clearing Agents are expected to produce on request, by the Customs Office, proof of appointment as a Clearing Agent by the client, in a form of clearing instructions signed by their client and be responsible for the Customs clearance processing of goods.
- (ii)** Advice to clients on correct Customs clearance procedures and processes,
- (iii)** Keep books of accounts or any other documents relating to business transactions within Lesotho, in one of the official languages for 5 years and shall produce them to RSL when required to do so.

8. Liability of Clearing Agents

- (i)** Liable for fulfillment of all obligations imposed upon the client under the Customs and Excise Act and other relevant laws, to the extent that such obligations are to be fulfilled by such client,
- (ii)** Liable for fulfillment of all obligations including: the payment of duties, taxes, penalties and charges, imposed on the client under the Customs & Excise Act and Revenue Acts;

- (iii)** Responsibility to ensure that the clearing officers are duly skilled in clearance procedures and all Customs and import and export related matters.

9. Limitation of Liability by the Customs Clearing Agents

The Customs Clearing Agent as an official appointee of the importer or exporter is liable for fulfillment of all obligations imposed upon the client as provided in section 5.02 and section 6 of this document. However, clearing agents shall not be liable where the following conditions are proven to exist. Clearing agent

- a)** was not party to the non-fulfillment of any such obligation,
- b)** had notified RSL of such non-fulfillment as soon as the Clearing Agent became aware of such,
- c)** took all reasonable steps to prevent such non-fulfillment.

10. Control Procedures for Licenses

In order to ensure effectiveness and efficiency of this system/framework, the following controls and/or parameters of operations must be observed:

- a)** No person shall operate as a Customs Clearing Agent unless licensed by RSL to do so;
- b)** RSL officers shall observe and confirm at all times that the Customs Clearing Agent's licenses are valid;
- c)** The Importer/Exporter's Taxpayer Identity Number (TIN) is expected to be quoted on all communication between the Customs Clearing Agent and RSL;
- d)** Should the Customs Clearing Licensee's details change, the licensee must advise RSL, within seven days (7) prior to such occurrence/changes becoming effective, using form CE185 obtainable from <https://www.rsl.org.ls/forms>.

- e) RSL shall carry out inspections from time to time to monitor whether the licensing and registration requirements are still being complied with. This may result in withdrawal or cancellation of the license if it is found out that the license has been used in any manner that contradicts the Customs and Excise Act and Customs Regulations of 1984 and other relevant laws. Licensing officers.

11. Monitoring and Evaluation

RSL shall measure from time to time performance of Clearing Agents for compliance, efficiency and effectiveness. The quality of work performed by Clearing Agents is very important as it affects the decisions made by traders and release times by Customs. Therefore, the performance standards are key in improving performance of Clearing Agents. The performance standards shall be used to measure performance of each clearing Agent licensed. The Authority shall reward good performance and shall sanction poor performance in line with the agreed Key Performance Indicators, KPIs.

12. Punitive Measures

RSL has the right to impose penalties on any person who contravenes any provisions of the Act and other relevant laws. The penalties shall be imposed on technical and administrative errors in terms of the Act and the Customs and Excise (Amendment) Regulations, 2022.

13. Refusal and Cancellation/Revocation of Licenses

RSL has the right to reasonably refuse application for issuance or renewal of a license and to suspend or cancel a license with written reasons for such. In cases of non-renewal, suspension and cancellation, ASYCUDA pass codes initially provided shall also be suspended or revoked as applicable.

The licensing application may be refused, or the license cancelled/revoked if the applicant or holder of a license has,

- a) contravened or failed to comply with the provisions of the Act,
- b) been convicted of any offence under the Act or any other Act administered by RSL and
- c) any other reasons and/or circumstances as may be identified.
- d) has acted to defraud RSL or a client,
- e) has granted a Clearing Agent license, documents or statements under false pretenses,
- f) has suggested a plan for evasion of any duties, taxes or other charges owed to RSL that involved the contravention of any relevant laws or regulations,
- g) has failed to comply with the Customs and Excise regulations,
- h) becomes insolvent or bankrupt,
- i) has engaged in dishonest conduct while transacting business as a Clearing Agent.

Before a license is suspended or cancelled, the RSL shall inform the Clearing Agent in writing of the intended suspension or cancellation, except in situations (which may be specified) warranting immediate action. Relevant information concerning any allegations or with respect to any of the grounds on which the proposal to suspend or cancel the license are based shall be provided to the Clearing Agents affording them an opportunity to explain in writing and/or orally during a personal hearing.

14. Withdrawal of License

The Customs Clearing License holder can voluntarily withdraw a license for reasons to be provided in writing to the Commissioner Core Operation; such reasons can include the following;

a) Voluntary Business Closure

Before the closure or winding of any business, a Customs Clearing License holder should, in writing notify the Commissioner Core Operations, stating the reasons for such closure.

b) Economic Force Circumstances:

Where businesses cease their operations is the economic climate. E.g. Failure to realize intended profits and or insolvency.

c) Forced Business Closure:

Where unforeseen and sometimes unfortunate circumstances lead to the permanent premature closure of business e.g. protests that can get out of control.

15. Conclusion

For any person to be considered for registration and licensing as a clearing agent such person should comply with the stipulated provisions of this regulatory framework document and the specific requirements should be met as indicated above.