

THE CUSTOMS ACT, 2011

(ACT No. 9 of 2011)

**Short title. THE CUSTOMS CLEARING AND FORWARDING AGENCY
REGULATIONS, 2015**

In exercise of the powers conferred upon the Commissioner-General by subsection (2) of section 85 of the Customs Act, 2011, the Minister responsible for Finance hereby makes the following Regulations.

PART I - PRELIMINARY

Interpretation.

1. In these Regulations unless the context otherwise requires –

“Act” means the Customs Act, 2011 (Act No. 9 of 2011);

“Agency” means customs clearing agency;

“Auditor-General” the Auditor-General appointed pursuant to section 119 of the Constitution of Sierra Leone;

“Authority” means the National Revenue Authority established by the National Revenue Authority Act 2002;

“Commissioner” means the person in charge of the Department of Customs Services (formally Customs and Excise Department) appointed under Section 22 of the National Revenue Authority Act, 2002;

“Commissioner-General” means the person in charge of the National Revenue Authority appointed under section 19 of the National Revenue Authority Act, 2002;

“Customs” means the Department of Customs Services – formally Customs & Excise Department of the National Revenue Authority;

“Customs Clearing and Forwarding Agency” means a registered business entity holding a valid customs clearing and forwarding agency’s licence that is authorized to transact business on behalf of an importer or exporter;

“Customs Clearing and Forwarding Agent” means a person who is the holder of a valid Customs Clearing and Forwarding Agency’s licence and is authorized to transact business on behalf of an importer or exporter;

“Customs Services Department” means .

PART II - CUSTOMS CLEARING AND FORWARDING AGENTS’ LICENCE

Import or export may be direct or by agent.

2. (1) An importer or exporter may, pursuant to section 84 of the Act, transact the business of importation, exportation, movement and carriage of goods with Customs either –

(a) directly on his own account; or

(b) through a designated third party acting as a Customs Clearing and Forwarding Agent.

(2) Pursuant to subsection (3) of section 12 of the Act, an importer or exporter and his designated Customs Clearing and Forwarding Agent shall be jointly and severally responsible for the performance of any obligation under the Act.

(3) The designation of a third party as a Customs Clearing and Forwarding Agent under clause (b) of sub-regulation (1) shall be in writing.

(4) Any declaration submitted to Customs by a designated Customs Clearing and Forwarding Agent shall be deemed to have been made with the full knowledge of the importer or exporter.

Customs Clearing Agent’s licence.

3 (1) No person shall be designated or act as a Customs Clearing and Forwarding Agent unless that person is a holder of a Customs Clearing Agent’s licence issued by the Commissioner-General for that purpose.

(2) Any person who wishes to operate the business of a Customs Clearing and Forwarding Agency shall apply to the Commissioner-General for a Customs Clearing and Forwarding Agent’s licence.

(3) An application for a Customs Clearing and forwarding Agent’s licence under sub-regulation (2) shall be accompanied by-

- (a) a non-refundable application fee as prescribed by the Commissioner-General;
- (b) Taxpayer Identification Number;
- (c) current tax clearance certificate;
- (d) valid business licence;
- (e) business registration certificate;
- (f) statement of business address.

(4) A Customs Clearing and forwarding Agent's licence issued by the Commissioner-General under this Regulation shall not be transferable.

Terms and conditions of licence.

4. Subject to the Act and these Regulations, the Commissioner-General may, subject to such terms, conditions and restrictions as shall be specified in the licence, grant a Customs Clearing and Forwarding Agent's licence to an applicant under Regulation 3, if he is satisfied that the applicant -

- (a) is registered as a business entity under the Laws of Sierra Leone;
- (b) has a Bond Guarantee of Twenty Million Leones (Le20Million) from a reputable commercial bank or such other value as may be prescribed by the Commissioner-General at both initial registration and renewal;
- (c) has not been convicted of a criminal offence by a Court of competent jurisdiction;
- (d) has at least three employees one of whom is a qualified Customs Clearing and Forwarding Agent certified by the Commissioner-General in accordance with criteria set out by the Licence Committee;

- (e) is resident in Sierra Leone; and
- (f) has a permanent business address in Sierra Leone with facility to access the operating software system used by the Customs Services Department.

Renewal of licence.

5. (1) A Customs Clearing and Forwarding Agent's licence that has not been renewed by close of business on the date of expiration shall no longer be valid.

(2) Renewal of a Customs Clearing and Forwarding Agent's licence shall be a two part process requiring –

- (a) completion of an application for renewal; and
- (b) payment of an annual licence fee.

Duration of licence.

6. A license issued under these Regulations shall be valid for a period of one year from the date of issue and may be renewed by the Commissioner-General on such terms and conditions as prescribed under Regulation 5.

Withdrawal or suspension of licence.

7. The Commissioner-General may on the advice of the Licence Committee referred to in regulation 9, revoke or suspend any of Customs Clearing and Forwarding Agent's licence granted under Regulation 3 -

- (a) if the licensee is in violation of any provisions of the Customs Act, 2011;
- (b) if there is a change in the financial status of the Customs Clearing and Forwarding Agent that may render the Customs Clearing and Forwarding Agent incapable of carrying out his functions under the Customs Act, 2011;
- (c) in the event of any proven act of impropriety, fraud, dishonesty by the agency; or

- (d) in the event of any reckless and careless discharge of duty by the Agency.

Surrender of licence.

8. A Customs Clearing and Forwarding Agent shall surrender his licence to the Commissioner-General if -

- (a) the licence has been suspended or withdrawn under Regulation 7; or
- (b) he has ceased to transact business as a customs clearing and forwarding agent.

Licence Committee.

9.(1) There shall be a Licence Committee appointed by the Commissioner-General to advise on issuance, suspension and withdrawal of licences.

(2) Notwithstanding the generality of sub-regulation (1), the Licence Committee appointed by the Commissioner-General under sub-regulation (1) shall-

- (a) set criteria for eligibility of applicants for Customs Clearing and Forwarding Agents' examinations;
- (b) set criteria for review of licence applications and advise the Commissioner General on approval or rejection;
- (c) investigate and report on issues relating to the issuance, suspension and withdrawal of licences;
- (d) hear appeals and objections made by Customs Clearing and Forwarding Agents;

PART III – RIGHTS AND OBLIGATIONS OF LICENCEE

Obligations of licensee.

10. A Customs Clearing and Forwarding Agent shall –

- (a) obtain an authorization from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Clearing and Forwarding Agent and produce

such authorization whenever required by the Commissioner-General;

- (b) transact business in any Customs Station either personally or through an employee duly approved by the Commissioner-General;
- (c) advise his client to comply with the Act and in case of noncompliance, to bring the matter to the notice of the Commissioner-General;
- (d) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;
- (e) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Commissioner-General, from a client who is entitled to such information;
- (f) promptly pay over to the Authority, when due, sums received for payment of any duty, tax, other debt or obligations owing to the Authority and promptly account to his client for funds received for him from the Authority or received from him in excess of Authority or other charges payable in respect of the clearance of cargo or baggage on behalf of the client;
- (g) not attempt to influence the conduct of any official of the Customs Services Department in any matter pending before such official or his subordinates by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favor or other thing of value;
- (h) not refuse access to, conceal, remove or destroy the whole or any part of any book,

paper or other record, relating to his transactions as a Customs Clearing and Forwarding Agent which is sought or may be sought by the Commissioner-General;

- (i) maintain up-to-date records and correspondences and other papers relating to his business as a Customs Clearing and Forwarding Agent and accounts including financial transactions in an orderly and itemized manner as may be specified by the Commissioner-General and in accordance with Regulation 13;
- (j) immediately report the loss of licence granted to him to the Commissioner-General;
- (k) discharge his duties as a Customs Clearing and Forwarding Agent with utmost speed and efficiency and in good faith;
- (l) verify antecedent, correctness of importer exporter Taxpayer Identification Number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information; and
- (m) inform any change of postal address, telephone number, email etc. to the Commissioner-General within one month of such change.

Right of appeal.

11. (1) A Customs Clearing and Forwarding Agent, who is aggrieved by any decision relating to the issuance, suspension or withdrawal of a licence under these Regulations, may appeal to the Commissioner-General in writing within 30 days of such decision.

(2) The Commissioner General may constitute an appeal hearing within 14 days to review the appeal and if it is decided that the appeal valid, a licence will be issued and if it is decided to affirm the non-issuance, suspension or withdrawal, the appellant shall be notified in writing.

Licencee to display

12. (1) A Customs Clearing and Forwarding Agent shall display his licence in a conspicuous position in his place of business.

licence.

(2) A Customs Clearing and Forwarding Agent who fails to display his licence as required under sub-regulation (1) shall be liable to a fine of not more than 1 million Leones and subsequent failure may lead to suspension or withdrawal of licence

Records keeping.

13. A Customs Clearing and Forwarding Agent shall keep proper books of Accounts consistent with generally acceptable accounting principles and such records shall be maintained for a minimum of 6 years.

Auditing of accounting of records.

14. The books of Accounts of a Customs Clearing and Forwarding Agency shall be audited by the Auditor-General or an auditor authorised by the Auditor-General for that purpose.

Payment of tax and filing of returns.

15. A Customs Clearing and Forwarding Agency shall –

(a) file annual income tax returns and other periodic returns including GST and PAYE;

(b) pay taxes on profits and other earnings,

in accordance with the Income Tax Act, 2000 and other tax legislation administered by the Authority.

MADE this day of , 2015

Kaifala Marah (Dr.)
Minister of Finance

FREETOWN
SIERRA LEONE
, 2015