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GOVERNMENT NOTICES GOEWERMENSKENNISGEWINGS

SOUTH AFRICAN REVENUE SERVICE SUID-AFIKAANSE INKOMSTEDIENS

No. R. 488

2 April 2003

CUSTOMS AND EXCISE ACT, 1964 AMENDMENT OF RULES (NO.DAR/72)

Under sections 64F and 120 of the Customs and Excise Act, 1964, the rules published in Government Notice R.1874 of 8 December 1995 are amended, with effect from 2 April 2003, to the extent set out in the Schedule hereto.

PRAVIN JAMNADAS GORDHAN
COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

By the insertion of the following rules for section 64F after the rules for section 64E:

"RULES FOR SECTION 64F OF THE ACT

Licensing of distributors of fuel obtained from the licensee of a customs and excise manufacturing warehouse

64F.01 Definitions and application of other provisions

- (a) For the purposes of these rules, the application of relevant rules for section 19A, the agreement and any form to which these rules relate, unless the context otherwise indicates -

'any other country in the common customs area' means the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia or the Kingdom of Swaziland; (referred to in the rules for section 19A as a "BLNS country");

'customs and excise laws and procedures' shall have the meaning assigned thereto in rule 59A.01(a);

'fuel' means, as defined in section 64F, 'any goods classifiable in any item of Section A of Part 2 of Schedule No. 1 liable to excise duty and goods classifiable in any item of Part 5 of Schedule No. 1 liable to fuel levy, used as fuel'; (referred to in rules 19A as "fuel levy goods")

'goods' includes fuel;

'manufacturing warehouse' means a licensed customs and excise manufacturing warehouse;

'refund' means a refund of excise duty or fuel levy contemplated in section 64F and provided for in items 609.28 and items 650.05 and 650.06 of Schedule No. 6;

'the Act' includes any provision of 'this Act' as defined in the Customs and Excise Act, 1964 (Act No. 91 of 1964).

(b) Except as otherwise provided in section 64F and these rules the provisions of -

- (i) the rules for section 19A;
- (ii) sections 64D and 64E and the rules therefor including the definitions in such rules;
- (iii) the rules for section 59A, where applicable, section 60 and the rules therefor including the definitions in such rules;
- (iv) the rules numbered 120A, where applicable,

shall apply, *mutatis mutandis* to the licensing of, and any activity of, or in connection with, a licensed distributor.

64F.02 **Applications for and refusal, suspension or cancellation of a licence, pro forma agreement and bond**

(a) A person applying for a licence or renewal of a licence as a licensed distributor must -

- (i) apply on form DA 185 and the appropriate annexure thereto and comply with all the requirements specified therein, in these rules, any relevant section or item of Schedule No. 8 governing such licences, any requirement specified in Schedule No. 6 and any additional requirements that may be determined by the Commissioner;
- (ii) submit with the application the completed agreement in accordance with the *pro forma* agreement specified in these rules;
- (iii) before a licence is issued furnish the security the Commissioner may require.

(b) (i) Where security is furnished in the form of a bond such bond and any addendum thereto shall be in accordance with the *pro forma* bond and addendum specified in these rules;

(ii) Such security may be amended from time to time by the provision of addendums to the bond;

(iii) Rules 120.08 and 120.09 shall *mutatis mutandis* apply to such bond;

(iv) Whenever any particulars regarding the legal status or address of the licensed distributor change in any manner whatsoever, such distributor shall immediately -

(aa) advise the Controller;

(bb) provide such addendums to the Controller as may be required;

- (cc) substitute the security where appropriate;
 - (dd) comply with such requirements and directions as the Controller may issue in respect of security.
- (c) (i) An expression in the *pro forma* agreement or bond shall, unless the context otherwise indicates, have the meaning assigned thereto in the Act or in the rules for section 60 or these rules.
- (ii) 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.
- (c) The provisions of section 60(2) shall apply *mutatis mutandis* in respect of the refusal of an application for a new licence or renewal of a licence, or the withdrawal or suspension of a licence for a licensed distributor.

64F.03

Delegation

Subject to section 3(2), where -

- (a) any power that may be exercised by the Commissioner, except for the power to make rules, in accordance with the provisions of this Act, including these rules, is not specifically delegated; or
- (b) any duty that shall be performed by the Commissioner in accordance with the provisions of the Act, including these rules, is not specifically assigned to any Controller or officer in these rules or in any section or rule regulating the movement of goods to which these rules relate,

such power is delegated or such duty is assigned, as the case may be, to the Assistant General Manager, Operations, Customs and Excise.

64F.04

Issue of invoices or dispatch delivery notes in respect of fuel removed from stocks of a licensee of a customs and excise manufacturing warehouse

- (a) Any licensed distributor who obtains any fuel from stocks of a licensee of a customs and excise manufacturing warehouse for any purpose contemplated in section 64F and specified in any item of Schedule No. 6, must in addition to any other document required to be completed in respect of any procedure prescribed in the Act, complete an invoice or dispatch delivery note, serially or transaction numbered and dated which must include at least—
 - (i) the licensed name, customs client number and physical address of the licensed distributor who so obtains such goods;
 - (ii) the licensed name and customs client number of the licensee of such warehouse, as well as the physical address of the storage tank from which the fuel was obtained;
 - (iii) a description of the goods so obtained, including the relevant tariff item thereof;
 - (iv) the quantity of goods (of which the volume must be stated at 20° Celsius) so obtained;

- (v) the date the goods were obtained from such tank;
 - (vi) the business name and the address of the person in the country of export or in the common customs area to whom the goods are removed;
 - (vii) the price charged for each unit and the total price of the invoiced goods.
- (b) The invoice price paid or payable by any purchaser in any other country of the common customs area must include excise duty and exclude fuel levy.
- (c) In addition to the requirements specified in rule 19A.04, the invoice issued by the licensee of the customs and excise manufacturing warehouse to the licensed distributor must reflect the rate of duty and amount of duty included in the price to the licensed distributor.

64F.05 Keeping of books, accounts and documents

- (a) For the purposes of section 101 and notwithstanding anything to the contrary in any rule contained, every licensee must, as required in terms of rule 60.08(2) -
- (i) keep proper books, accounts and documents and any data created by means of a computer, of all transactions relating to the activity in respect of which the licence is issued, 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;
 - (ii) include in such books, accounts, documents and data any requirements prescribed in any provision of the Act in respect of the activity for which the licence is issued;
 - (iii) produce such books, accounts, documents and data on demand at any reasonable time and render such returns or submit such particulars in connection with the transactions relating to the licensed activity as the Commissioner may require.
- (b) Such books, accounts, documents and data must include where applicable -
- (i) proper accounting records of each type of goods obtained and removed;
 - (ii) copies of invoices, dispatch delivery notes, bills of entry or other documents relating to the movement of the goods, transport documents, orders, payments received and made and proof of delivery to the consignee in respect of goods removed for any purpose contemplated in section 64F;
 - (iii) copies of the contract of carriage entered into between the licensee and the licensed remover of goods in bond and delivery instructions issued to such remover in respect of each consignment; and
 - (iv) copies of the applications for refund of duty and supporting documents.

64F.06 Procedures relating to the movement of fuel to a BLNS country or exported

- (a) The procedures and other requirements prescribed in rule 19A4.04 which regulate the removal of fuel levy goods to a BLNS country or when exported shall apply *mutatis mutandis* in respect of fuel so removed to any other country in the common customs area or so exported as contemplated in section 64F and these rules.
- (b) Unless the licensed distributor uses own transport, such fuel, if wholly or partly transported by road, must be carried by a licensed remover of goods in bond contemplated in section 64D.
- (c) The number and date of the invoice issued by the licensee of the customs and excise manufacturing warehouse from whom the licensed distributor obtained the goods for such removal or export must be reflected on the form DA 35 or DA 550, as the case may be.
- (d) The form DA 35 must be numbered as specified in rule 19A4.04.
- (e) Any load of fuel obtained from the licensee of a customs and excise manufacturing warehouse must be wholly and directly removed for delivery to a BLNS country or exported, as the case may be, in order to be considered for a refund of duty.

64F.07 Application for a refund of duty

- (a)
 - (i) Application for a refund of excise duty or fuel levy may only be submitted monthly in respect of fuel actually delivered to the purchaser in another country of the common customs area or exported during the month preceding such application.
 - (ii) a separate application for such refund must be submitted in respect of fuel removed to such other country and fuel exported.
- (b) Any such application must be on form DA 64F and must be supported by -
 - (i) in the case of form DA 35 -
 - (aa) where the goods are removed by road a form DA 610 (ZDD) containing a summary of the forms DA 35 in respect of which a refund of duty is claimed, the register referred to in rule 19A4.04(e) and forms DA 35 with the front and reverse duly completed;
 - (bb) where the goods are removed by rail to a consignee in the common customs area the form DA 35 must be supported by the final rail consignment note and acknowledgement of receipt by the consignee;
 - (ii) in the case of form DA 550 (exports) -
 - (aa) the form DA 550 with the front and reverse duly completed as contemplated in rule 19A4.04;
 - (bb) where relevant, the final rail consignment note, the bill of lading or air way bill.
 - (iii) in the case of form DA 610 -
 - (aa) the form DA 610 with the front and reverse duly completed as contemplated in rule 19A4.04;

- (bb) where relevant, the bill of lading or air waybill,
- (iv) the invoice from the licensee of the customs and excise warehouse from whom the goods were obtained;
- (v) a copy of the invoice or delivery note issued by the licensed distributor.
- (c) The licensed distributor must submit with each application for refund a statement to the effect that -
 - (i) the goods obtained from the licensee of the customs and excise manufacturing warehouse and removed to any other country in the common customs area or exported as reflected on such application were duly removed to and received in such other countries or were duly exported, as the case may be;
 - (ii) a record of such removal or export is available at the place of business of such licensed distributor as contemplated in rule 64F.05 and will be kept in accordance with the requirements of that rule.
- (d) Any such application is subject to the provisions of item 609.28, or 605.05 or 650.06 of Schedule No. 6.

CUSTOMS AND EXCISE ACT, 1964 (ACT NO. 91 OF 1964)

LICENSING OF DISTRIBUTORS OF FUEL

(Pro Forma Agreement between the licensed distributor
contemplated in section 64F and its rules
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

*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 licensed distributor; 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. 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.
2. (a) 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–
 - (i) understands that its rights to conduct the business of licensed distributor are 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;

- (ii) is aware of the civil and criminal regulatory consequences of non-compliance with such laws and procedures and the provisions of this agreement.
- (b)
 - (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 as well as the banking accounts and records relating to the business conducted under the licence.
 - (ii) Licensee agrees to and authorises the inspection of such books and documents and business banking accounts as the Commissioner and the delegated officers may require.
- (c) 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 (except in respect of subparagraphs (v) or (vii)) 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 or any condition or obligation imposed by the Commissioner in respect of such licence;
 - (iii) is convicted of any offence under the Act;
 - (iv) is convicted of any offence involving dishonesty;
 - (v) is sequestrated or liquidated;
 - (vi) fails to comply with the qualification requirement set out in the rules for section 60; or
 - (vii) ceases to carry on the business for which the licence is issued,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.
- (d) Licensee in addition undertakes:
 - (i) to keep on the business premises proper books, accounts, documents and other records relating to the transactions of the business comprising, where applicable, at least—
 - (aa) copies of the relative export bills of entry, other prescribed movement documents, invoices, bills of lading and other transport documents, orders and payments received and made;
 - (bb) every contract entered into and any instruction given to any licensed remover of goods in bond in respect of the carriage of goods by such remover;

- (cc) books, accounts, documents and proof of fulfilment of any obligation relating to the removal and delivery of goods obtained from the licensee of a customs and excise manufacturing warehouse to another country in the common customs area or exported;
 - (dd) copies of the application for refund of duty and supporting documents; and
 - (ee) any other books, accounts, documents and other records which may be required in terms of any rule relating to any business transacted by a licensed distributor;
 - (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 for the purposes 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—
 - (aa) that 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 provisions of the Act;
 - (bb) that every person in the employ of the licensee and engaged in the customs and excise business of the licensee 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.
3. Licensee is aware of the obligation at all times to be able to prove the fulfilment of any obligation relating to the goods obtained, exported or removed to another country in the common customs area as may be required in terms of any provision of the Act.
4. 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 prescribed in the rules for section 60 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 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 transact such business efficiently and in compliance with the provisions of such laws and procedures.
5. 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.
- 6.(a) The licensee chooses *domicilium citandi et executandi* at:
-
- (b) The Commissioner chooses *domicilium citandi et executandi* at:
-
7. Thus done and signed at: on this
-
-
- Licensee Witness
- Thus done and signed at: on this
-
-
- for and on behalf of the Commissioner Witness
for the South African Revenue Service

SOUTH AFRICAN REVENUE SERVICE

PRO FORMA BOND FOR A LICENSED DISTRIBUTOR OF FUEL

(To be furnished by a licensed distributor of fuel in accordance with the provisions
of section 64 F of the Customs and Excise Act, 1964 (Act No. 91 of 1964)
and the rules for section 64F)

Know all whom it may concern that –

Whereas _____ as principal debtor, herein represented by:

1. _____

2. _____

in their respective capacities as

1. _____

2. _____

* being duly authorised thereto by virtue of a resolution passed at a meeting of the Board of Directors held at
_____ on this _____ day of _____ 20____

* being duly authorised thereto with the express consent in writing of all the members of the close corporation / all the partners
of a partnership / trustees of the trust obtained at a meeting held at _____ on
this _____ day of _____ 20____

and

_____ as surety and co-principal debtor in *solidum* herein represented by:

1. _____

2. _____

in their capacities as

1. _____

2. _____

being duly authorised thereto by virtue of standard internal regulations relating to signing powers.

* Delete which is not applicable.

are truly and lawfully indebted and are held and firmly bound to the Commissioner for the South African Revenue Service in the amount of R _____ (amount in words) to be paid on demand to the said Commissioner,

for which payment well and truly to be made we bind ourselves jointly and severally, each for the whole our heirs, executors, administrators and assigns,

and, whereas,

the Principal Debtor is desirous of transacting business with the Commissioner for the South African Revenue Service as a licensed distributor of fuel as contemplated in section 64F of the Customs and Excise Act, 1964 and the rules therefor for the purpose of obtaining a refund of duty on fuel obtained from stocks of a licensee of a customs and excise manufacturing warehouse and removed in accordance with any prescribed document and delivered to a purchaser in any other country in the common customs area or exported, subject to compliance with the provisions of the said section and rules and any other customs and excise laws of the Republic governing such refund or the removal or export of such fuel,

NOW therefore the conditions of this obligation are such that if the Principal Debtor shall, in accordance with the provisions of the said provisions of such section, the rules and other laws, have proved to the satisfaction of the Commissioner for the South African Revenue Service that such goods have been duly delivered in the common customs area or have been duly taken out of the common customs area for export in accordance with such prescribed document for the purposes of entitlement to a refund of duty, and shall have repaid any amount of duty which was not duly refundable in respect of such removal or export, and otherwise fully comply with any obligation imposed under the provisions of such section, rules or other laws, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

FURTHERMORE WE, the principal Debtor(s) and Co-Principal Debtor(s) renounce and waive the:

- (i) *Beneficium ordinis seu excussionis*;
- (ii) *Beneficium divisionis*; and
- (iii) Any other exception that may be taken in law.

With the meaning and effect of which we are fully acquainted.

This guarantee is not transferable or negotiable.

All admissions or acknowledgements of indebtedness made by the Principal Debtor shall be binding upon the Co-Principal Debtor.

The Commissioner or his delegated officer shall be at liberty, without affecting the Commissioner's rights hereunder, to release securities provided by or on behalf of the Principal Debtor by any person, association of persons, firm or company and to give time to, or compound or make other arrangements with the Principal Debtor its legal representative in insolvency, judicial management or otherwise.

Any claim arising hereunder may be recovered in any division of the High Court of South Africa as the Commissioner may elect and the Co-Principal Debtor hereby consents and submits to the Jurisdiction of such a Court in respect of any such claim.

Signed by the principal at _____ on this _____ day of _____ 20__

Signature of Principal

Signature of Principal

In the presence of the subscribed witnesses:

1. _____
2. _____

Signed by the Surety(ies) and Co-Principal Debtor(s) on this _____ day of _____
20____ at _____.

Signature of Surety and Co-Principal Debtor

Signature of Surety and Co-Principal Debtor

In the presence of the subscribed witnesses:

1. _____
2. _____

and _____ as Surety(ies) and Co-Principal Debtor(s) *in solidum* herein
represented by -

1. _____
2. _____

in their respective capacities as -

1. _____
2. _____

they being duly authorised thereto by virtue of standard *internal banking / insurance regulations relating to signing powers, to the
bond in the sum of R _____ signed on behalf of the Principal at _____ on this
_____ day of _____ 20____ are bound under that bond, is hereby
increased by an amount of R _____ to R _____

Signed by the Principal _____ on this _____ day of
_____ 20____ at _____

Signature of Principal

Signature of Principal

In the presence of the subscribed witnesses:

1. _____

1. _____

2. _____

2. _____

Signed by the Surety and Co-Principal Debtor on this the _____ day of _____
at _____

Signature of Surety and Co-Principal Debtor

Signature of Surety and Co-Principal Debtor

In the presence of the subscribed witnesses:

1. _____

1. _____

2. _____

2. _____

* Delete whichever is not applicable

SOUTH AFRICAN REVENUE SERVICE

CUSTOMS AND EXCISE ACT, 1964 (ACT NO. 91 OF 1964)

PRO FORMA ADDENDUM TO BOND FOR LICENSED DISTRIBUTOR - RULE 64F.02

The sum in which we _____ as Principal (hereinafter referred to as the Principal) herein represented by -

1. _____

2. _____

in their respective capacities as -

1. _____

2. _____

* they being duly authorised thereto by virtue of a resolution passed at a meeting of the Board of Directors held at _____

* They being duly authorised thereto with the express consent in writing of all the members of the close corporation / all the partners of a partnership / trustees of the trust obtained at a meeting held at _____ on this _____ day of _____ 20 _____

and _____ as Surety(ies) and Co-Principal Debtor(s) *in solidum* herein represented by -

1. _____

2. _____

in their respective capacities as -

1. _____

2. _____

they being duly authorised thereto by virtue of standard *internal banking / insurance regulations relating to signing powers, to the bond in the sum of R _____ signed on behalf of the Principal at _____ on this _____ day of _____ 20 _____ are bound under that bond, is hereby increased by an amount of R _____ to R _____

Signed by the Principal _____ on this _____ day of _____ 20 _____ at _____

Signature of Principal

Signature of Principal

in the presence of the subscribed witnesses:

1. _____

1. _____

2. _____

2. _____

Signed by the Surety and Co-Principal Debtor on this the _____ day of _____
at _____

Signature of Surety and Co-Principal Debtor

Signature of Surety and Co-Principal Debtor

In the presence of the subscribed witnesses:

1. _____

2. _____

1. _____

2. _____

* Delete whichever is not applicable"