

REPUBLIC OF SOUTH AFRICA

CUSTOMS AND EXCISE AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 36945 of 18 October 2013)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 44—2013]

ISBN 978-1-77597-089-7

No. of copies printed 1 800

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Customs and Excise Act, 1964, so as to delete all provisions superseded by general provisions of the Customs Control Act applicable to all tax levying Acts; to delete all provisions relating to the customs control of imported goods and goods to be exported; to delete all provisions relating to the imposition, collection and refunding of customs duties and other matters relating to customs duties; to limit the remaining provisions of the Act to excise duties, fuel levies, Road Accident Fund levies, environmental levies, air passenger taxes and matters relating to such duties, levies and taxes; and to change the name of the Act to the Excise Duty Act, 1964; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1966, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 32 of Act 60 of 1989, section 51 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 34 of Act 34 of 1997, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000, section 60 of Act 59 of 2000, section 113 of Act 60 of 2001, section 131 of Act 45 of 2003, section 66 of Act 32 of 2004, section 85 of Act 31 of 2005, section 7 of Act 21 of 2006, section 10 of Act 9 of 2007, section 4 of Act 36 of 2007 and section 22 of Act 61 of 2008

1. Section 1 of the Customs and Excise Act 1964, (hereinafter referred to as the principal Act) is hereby amended—
- (a) by the deletion in subsection (1) of the definitions of “break bulk goods”, “bulk goods”, “bulk goods terminal”, “bulk goods terminal operator”, “combination terminal”, “combination terminal operator”, “container depot”, “container depot operator”, “container operator” and “container terminal operator”;
 - (b) by the insertion in subsection (1) after the definition of “Controller” of the following definition:
“‘customs controlled area’ has the meaning assigned to it in the Customs Control Act;”;

- (c) by the substitution in subsection (1) for the definition of “crew” of the following definition:
“**‘crew’ [includes every person (except the master or pilot) employed in any capacity on board any ship or aircraft] has the meaning assigned to it in the Customs Control Act;**”;
- (d) by the insertion in subsection (1) after the definition of “crew” of the following definition:
“**‘Customs Control Act’ means the Customs Control Act, 2013;**”;
- (e) by the substitution in subsection (1) for the definition of “customs duty” of the following definition:
“**‘customs duty’ means [, subject to the provisions of subsection (3), any] an import duty [leviable under Part 1 of Schedule No. 1 (except Parts 3, 4 and 5 thereof) or No. 2 on goods imported into the Republic] within the meaning of the Customs Duty Act;**”;
- (f) by the insertion in subsection (1) after the definition of “customs duty” of the following definition:
“**‘Customs Duty Act’ means the Customs Duty Act, 2013;**”;
- (g) by the deletion in subsection (1) of the definitions of “degrouper operator”, “degrouper” and “depot operator”;
- (h) by the substitution in subsection (1) for the definition of “duty” of the following definition:
“**‘duty’ means any excise duty [leviable under this Act], fuel levy or Road Accident Fund levy, and subject to—**
(a) section 47B, any air passenger tax leviable under that section; and
(b) [subject to] Chapter VA, any environmental levy leviable under that Chapter;
but excludes a customs duty;”;
- (i) by the insertion in subsection (1) after the definition “excise duty” of the following definitions:
“**‘excise manufacturing warehouse’ means any premises licensed in terms of this Act as a warehouse for the manufacture of excisable goods, fuel levy goods, environmental levy goods or Road Accident Fund levy goods;**
‘excise storage warehouse’ means any premises licensed in terms of this Act as a warehouse for the storage of locally manufactured excisable goods, fuel levy goods, environmental levy goods or Road Accident Fund levy goods;
‘Excise Tariff’ means the Excise Tariff referred to in section 43A;”;
- (j) by the insertion in subsection (1) after the definition of “excise value” of the following definitions:
“**‘excise warehouse’ means an excise manufacturing warehouse or excise storage warehouse;**
‘excise warehouse transit procedure’ has the meaning assigned to it in the Customs Control Act;”;
- (k) by the substitution in subsection (1) for the definition of “exporter” of the following definition:
“**‘exporter’ [includes any person who, at the time of exportation—**
(a) **owns any goods exported;**
(b) **carries the risk of any goods exported;**
(c) **represents that or acts as if he is the exporter or owner of any goods exported;**
(d) **actually takes or attempts to take any goods from the Republic;**
(e) **is beneficially interested in any way whatever 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, includes the manufacturer, supplier or shipper of such goods or any person inside or outside the Republic representing or acting on behalf of such manufacturer, supplier or shipper] has the meaning assigned to it in the Customs Control Act; and”;

- (l) by the substitution in subsection (1) for the definition of “home consumption” of the following definition:
 “**‘home consumption’** means [consumption or use] that the goods may be consumed, utilised, processed or otherwise disposed of in the Republic as goods that are no longer subject to customs control;” 5
- (m) by the substitution in subsection (1) for the definition of “illicit goods” of the following definition:
 “**‘illicit goods’**, in relation to [imported or] excisable goods, [surcharge goods or] fuel levy goods, environmental levy goods or Road Accident Fund levy goods, means any such goods in respect of which any contravention under this Act has been committed, and includes any preparation or other product made wholly or in part from spirits or other materials which were illicit goods;” 10
- (n) by the substitution in subsection (1) for the definition of “importer” of the following definition:
 “**‘importer’** [includes any person who, at the time of importation—
 (a) owns any goods imported;
 (b) carries the risk of any goods imported;
 (c) represents that or acts as if he is the importer or owner of any goods imported; 20
 (d) actually brings any goods into the Republic;
 (e) is beneficially interested in any way whatever in any goods imported;
 (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e)] has the meaning assigned to it in the Customs Control Act;” 25
- (o) by the deletion in subsection (1) of the definitions of “International Trade Administration Commission”, “L.C.L. container” and “master”;
- (p) by the deletion in subsection (1) of the definition of “Office”;
- (q) by the substitution in subsection (1) for the definition of “officer” of the following definition: 30
 “**‘officer’** means a [person employed on any duty relating to customs and excise by order or with the concurrence of the Commissioner, whether such order has been given or such concurrence has been expressed before or after the performance of the said duty] customs officer within the meaning of the Customs Control Act, whether called a customs officer or excise officer;” 35
- (r) by the substitution in subsection (1) for the definition of “Road Accident Fund levy goods” of the following definition:
 “**‘Road Accident Fund levy goods’** means, subject to subsection (4), any goods specified in Part 5B of Schedule No. 1 which have been manufactured in or imported into the Republic;” 40
- (s) by the deletion in subsection (1) of the definitions of “road vehicle terminal” and “road vehicle terminal operator”;
- (t) by the substitution in subsection (1) for the definition of “State warehouse” of the following definition: 45
 “**‘State warehouse’** [means any premises provided by the State for the deposit of goods for the security thereof and of the duties due thereon, or pending compliance with the provisions of any law in respect of such goods] has the meaning assigned to it in the Customs Control Act;” 50
- (u) by the deletion in subsection (1) of the definitions of “surcharge” and “surcharge goods”;
- (v) by the deletion in subsection (1) of the definitions of “transit shed” and “transit shed operator”; 55
- (w) by the substitution for subsection (2) of the following subsection:
 “(2) In this [section, except in the definition of ‘package’, and in sections 4, 6, 7, 18, 38, 44, 64A and 87 (2) and 107, ‘container’ means transport equipment of tariff heading 86.09—
 (a) having an internal volume of not less than one cubic metre; and 60

- (b) **designed for the transport of goods by any means of carriage, without intermediate reloading, and in this Act ‘containerised’ has a corresponding meaning]** Act ‘container’, when used as referring to reusable transport equipment within the meaning of the Customs Control Act, has the meaning assigned to it in that Act.”; 5
- (x) by the substitution for the first subsection (3) and the second subsection (3) of the following subsection:
- “(3) For the purposes of the SACU Agreement—
- [(a) ‘customs duty’ includes, except for the purposes of articles 32, 33 and 34 of the said agreement, any duty leviable under Part 3, 5 or 8 of Schedule No. 1 on goods imported;]** 10
- (b) ‘excise duty’ includes, except for the purposes of articles 32, 33 and 34 of the said agreement, any duty leviable under Part 3, 5 or 8 of Schedule No. 1 on goods manufactured in the common customs area; and 15
- [(3) For the purposes of the SACU Agreement,]**
- (c) the movement between the Republic and a Member State of any goods on which a duty is leviable under Part 3, Part 5A or Part 5B of Schedule No. 1 shall, in addition to any provision of the Customs Control Act generally regulating the movement of goods between the Republic and a Member State, be subject to compliance with the procedures prescribed in any provision of this Act relating to the movement of such goods.”; 20
- (y) by the substitution for subsection (5) of the following subsection: 25
- “(5) The expression ‘goods under customs control’, ‘goods subject to customs control’ or ‘goods under control of the Commissioner’ and any cognate expression **[shall, unless the context otherwise indicates, be deemed to include, but is not limited to—**
- (a) any ship, vehicle or container contemplated in section 1(2) that is entering or leaving the Republic;** 30
- (b) any goods to which this Act relates that are—**
- (i) **on any ship or vehicle or in any container contemplated in section 1(2) that is entering or leaving the Republic;**
- (ii) **in, on or at any premises licensed, registered or approved, or which should have been so licensed, registered or approved, for any purpose in terms of this Act;** 35
- (iii) **in, on or at any premises or at any place appointed, prescribed or designated in terms of section 6;**
- (iv) **in transit within or through the Republic or conveyed for transshipment to any place outside the Republic in such manner as may be specified by rule;** 40
- (v) **in, on or at a State warehouse or any place deemed in terms of section 43(2) to be a State warehouse;**
- (vi) **in, on or at any place where goods are kept after having been detained or seized under the provisions of this Act;** 45
- or**
- (vii) deemed in terms of any provision of this Act to be under customs control,**
- whether or not declared in terms of any provision of this Act or, if so declared, whether or not release thereof has been granted]** 50
- must be read as referring to goods that are subject to customs control in terms of Part 1 of Chapter 2 of the Customs Control Act.”; and
- (z) the insertion after subsection (5) of the following subsections: 55
- “(6) As from the effective date as contemplated in section 926 of the Customs Control Act, and unless the context otherwise indicates, any reference in a provision of this Act to—
- (a) a duty must be read as referring to a duty other than a customs duty;
- (b) dutiable goods must be read as referring to goods dutiable other than for customs duty; 60
- (c) imported goods or goods deemed to be imported into the Republic or goods deemed to be imported into the Republic in terms of

- section 10, must be read as referring to goods imported into the Republic within the meaning of “import” in the Customs Control Act;
- (d) entry of goods must be read as referring—
- (i) in the case of imported goods, to a clearance of goods in terms of the Customs Control Act for home use or a customs procedure; 5
 - (ii) in the case of goods manufactured in an excise warehouse—
 - (aa) to an entry in terms of this Act, if the goods are destined for home consumption or removal to another excise warehouse; or 10
 - (bb) to a clearance in terms of the Customs Control Act, if the goods are destined for another purpose or procedure which is a customs procedure in terms of that Act; or 15
 - (iii) in the case of goods manufactured subject to customs control otherwise than in an excise warehouse, to a clearance of goods in terms of the Customs Control Act for a customs procedure;
- (e) a bill of entry must be read as referring— 20
- (i) in the case of goods cleared or to be cleared as contemplated in paragraph (d)(i), (ii)(bb) or (iii), to a clearance declaration in terms of the Customs Control Act; or
 - (ii) in the case of goods entered or to be entered as contemplated in paragraph (d)(ii)(aa), to a bill of entry in terms of this Act; 25
- (f) entry or release of goods for home consumption must be read as referring,—
- (i) in the case of imported goods, to clearance or release of goods for home use in terms of the Customs Control Act; or
 - (ii) in the case of goods manufactured in an excise manufacturing warehouse, to entry or release of goods for home consumption in terms of this Act; 30
- (g) entry or release of goods for export must be read as referring to clearance or release of goods for export in terms of the Customs Control Act; 35
- (h) entry or release of goods for removal in bond must be read as referring,—
- (i) in the case of imported goods, to clearance or release of goods in terms of the Customs Control Act for—
 - (aa) the excise warehouse transit procedure, if the goods are to be removed to an excise warehouse; or 40
 - (bb) the transit procedure or another customs procedure that allows goods to be transported under that procedure, if the goods are to be removed to a place other than an excise warehouse; 45
 - (ii) in the case of goods in or manufactured in an excise warehouse, to—
 - (aa) entry or release of goods for removal in bond in terms of this Act, if the goods are to be removed to another excise warehouse; or 50
 - (bb) clearance or release of goods in terms of the Customs Control Act under a customs procedure that allows goods to be transported under that procedure, if the goods are to be removed to a place other than an excise warehouse; or 55
 - (iii) in the case of goods manufactured subject to customs control otherwise than in an excise warehouse, to clearance or release of goods in terms of the Customs Control Act under a customs procedure that allows goods to be transported under that procedure; 60
- (i) removal of goods in bond must be read in a manner that corresponds with paragraph (h);

- (j) a licenced remover of goods in bond must be read as referring to—
- (i) a remover in bond licensed in terms of this Act, if the goods are or are to be removed between excise warehouses; or
 - (ii) a carrier licensed in terms of the Customs Control Act to transport goods not in free circulation, if the goods are or are to be removed from an excise warehouse to a place other than another excise warehouse;
- (k) a customs and excise warehouse must be read as referring to an excise warehouse;
- (l) a fine or penalty provided for in this Act must be read as including a reference to a fine or penalty provided for in the Customs Control Act or the Customs Duty Act; and
- (m) the Controller must—
- (i) be read as a reference to the Commissioner; or
 - (ii) if the provision in which the reference is contained assigns a power or duty to the Controller that has been delegated in terms of section 3, be read as a reference to an officer or person to whom that power or duty has been delegated in terms of section 3.
- (7) (a) If goods or any other things are to be detained, seized or forfeited in terms of this Act, the detention, seizure or forfeiture must be effected and the goods or thing be dealt with in accordance with Chapter 34 of the Customs Control Act.
- (b) Any such detention, seizure or forfeiture under this Act must for purposes of paragraph (a) be regarded to be a detention, seizure or confiscation contemplated in that chapter.
- (8) In the event of any inconsistency between a provision of this Act and a provision of the Customs Control Act or the Customs Duty Act, the provision of this Act prevails if the provision of this Act relates to—
- (a) an excise duty, fuel levy, Road Accident Fund levy, environmental levy or air passenger tax;
 - (b) an excise warehouse; or
 - (c) a matter, goods or a person in connection with any such duty, levy or tax or warehouse.”.

Amendment of section 2 of Act 91 of 1964, as amended by section 1 of Act 45 of 1995 and section 132 of Act 45 of 2003

2. Section 2 of the principal Act is hereby amended by the deletion of subsections (1A) and (2).

Amendment of section 3 of Act 91 of 1964, as amended by section 132 of Act 45 of 2003 and section 27 of Act No. 21 of 2012

3. Section 3 of the principal Act is hereby amended—

- (a) by the substitution for the section heading of the following section heading:
“Delegation of duties and powers of [Commissioners] Commissioner”;
- (b) by the substitution for subsection (1) of the following subsection:
 “(1) Any duty imposed or power conferred on the Commissioner in terms of this Act may be performed or exercised by—
 (a) the Commissioner personally; or
 (b) **[by]** an officer or any other person under—
 (i) a delegation from the Commissioner in terms of section 19 of the Customs Control Act; or
 (ii) **[under]** the control or direction of the Commissioner.”;
- (c) by the insertion after subsection (1) of the following subsection:
 “(1A) A reference to the Controller in a provision of this Act imposing a duty or conferring a power on the Controller must, for purposes of a delegation in terms of section 19 of the Customs Control Act, be read as a reference to the customs authority.”; and
- (d) by the deletion of subsection (2).

Repeal of sections 3A, 4, 4B, 4C, 6, 6A, 7, 7A, 8, 9, 10, 11, 11A, 12, 13, 14, 15, 16 and 17 of Act 91 of 1964

4. Sections 3A, 4, 4B, 4C, 6, 6A, 7, 7A, 8, 9, 10, 11, 11A, 12, 13, 14, 15, 16 and 17 of the principal Act are hereby repealed:

Amendment of section 18 of Act 91 of 1964, as amended by section 2 of Act 95 of 1965, section 6 of Act 105 of 1969, section 4 of Act 71 of 1975, section 3 of Act 105 of 1976, section 3 of Act 112 of 1977, section 4 of Act 84 of 1987, section 13 of Act 59 of 1990, section 11 of Act 45 of 1995, section 48 of Act 53 of 1999, section 37 of Act 19 of 2001, section 119 of Act 60 of 2001, section 102 of Act 74 of 2002, section 21 of Act 34 of 2004, section 16 of Act 21 of 2006 and section 26 of Act 18 of 2009

5. Section 18 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) except as otherwise prescribed by rule—

[i] **the importer or owner of any imported goods landed in the Republic;**

(ii) the licensee of any **[customs and]** excise manufacturing warehouse in which excisable or fuel levy goods are manufactured;

(iii) the licensee of any excise storage warehouse in which excisable or fuel levy goods are stored;

(iv) the licensee **[or owner of any imported goods stored in a customs and]** of an excise **[storage]** warehouse to which imported goods were removed; or

(v) any clearing agent licensed in terms of section 64B appointed by such **[importer, owner or]** licensee,

may enter such goods for removal in bond **[and may remove such goods or cause such goods to be removed—**

(aa) in the case of goods contemplated in subparagraph

(i), to any place in the Republic appointed as a place of entry or warehousing under this Act or to any place outside the Republic: Provided that any goods which are in transit through the Republic as contemplated in subsection (1A), may only be so entered and removed or caused to be so removed by such licensed clearing agent; or

(bb) in the case of goods contemplated in subparagraphs

(ii), (iii) or (iv), to any warehousing place in the Republic or to any place in any other country in the common customs area appointed as a warehousing place for rewarehousing at that place in another such warehouse]

to another excise warehouse or for another purpose as may be specified by rule: Provided that this paragraph may not be read as permitting the removal of goods from one excise storage warehouse to another excise storage warehouse;”;

(b) by the deletion in subsection (1) of paragraphs (b), (c), (d) and (e);

(c) by the deletion of subsection (1A);

(d) by the substitution for subsection (2) of the following subsection:

“(2) In addition to any liability for duty incurred by any person under any provision of this Act, but subject to the provisions of section 99(2), the person who enters any goods for removal in bond or who may remove in bond any goods contemplated in subsection (1) and who removes or causes such goods to be so removed, shall **[subject to the provisions of subsection (3),]** be liable for the duty on all goods which are so entered and so removed in bond, whilst the goods are so removed.

(e) by the substitution for subsection (3) of the following subsection:

“(3) Liability in terms of subsection (2) ends when the goods are delivered to the destination declared on the bill of entry.”;

- (f) by the substitution for subsection (4) of the following subsection:
- “(4) If—
- (a) liability has not ceased as contemplated in subsection (3) [(a)]; or
- (b) the goods have been diverted or deemed to have been diverted as contemplated in subsection (13),
- [such person shall, except if payment has been made as contemplated in subsection (3) (b) (iv),] the person who is liable for duty as contemplated in subsection (2) shall upon demand pay—**
- (i) the duty and value-added tax due in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), as if the goods were entered for home consumption on the date of entry for removal in bond;
- (ii) any amount that may be due in terms of section [88(2)] 882 of the Customs Control Act; and
- (iii) any interest due in terms of section 105:
- Provided that such payment shall not indemnify a person against any fine or penalty provided for in this Act, the Customs Control Act or other applicable Act.”;
- (g) by the deletion of subsections (5), (8) and (11);
- (h) by the substitution in subsection (13)(a) for subparagraph (i) of the following subparagraph:
- “(i) No person shall, without the permission of the Commissioner, divert any goods removed in bond to a destination other than the destination declared on the entry for removal in bond **[or deliver such goods or cause such goods to be delivered in the Republic except into the control of the Controller at the place of destination].**”;
- (i) by the substitution in subsection (13)(a)(ii) for item (aa) of the following item:
- “(aa) no permission to divert such goods has been granted by the Commissioner as contemplated in subparagraph (i) and the person concerned fails to produce valid proof and other information and documents for inspection to an officer **[or to submit such proof, information and documents to the Commissioner as required in terms of subsection (3) (b) (ii) and (iii), respectively]** that the goods have been delivered to the place of destination declared on the entry for removal in bond;”;
- (j) by the deletion in subsection (13) of paragraph (b).

Amendment of section 18A of Act 91 of 1964 as inserted by section 5 of Act 84 of 1987 and amended by section 12 of 1995, section 38 of Act 19 of Act 2001, section 120 of Act 60 of 2001 and section 27 of Act 18 of 2009

6. Section 18A of the principal Act is hereby amended—
- (a) by the substitution for the section heading of the following section heading:
- “Exportation of goods from [customs and] excise [warehouse] warehouses”;**
- (b) by the substitution for subsection (1) of the following subsection:
- “(1) Notwithstanding any liability for duty incurred thereby by any person in terms of any other provision of this Act, any person who exports any goods from **[a customs and] an** excise warehouse **[to any place outside the common customs area]** shall, despite such export but subject to the provisions of subsection (2), be liable for the duty on all goods which he or she so exports.”;
- (c) the substitution in subsection (2)(a) for subparagraph (i) of the following subparagraph:
- “(i) the said goods have been duly **[taken out of the common customs area]** exported; or”;
- (d) by the substitution in subsection (3) for paragraph (ii) of the following paragraph:
- “(ii) any amount that may be due in terms of section **[88 (2)] 882 of the Customs Control Act;** and”;

- (e) by the substitution for subsection (4) of the following subsection:
 “(4) No goods shall be exported in terms of this section unless—
 (a) **[until they have been entered]** cleared and released in terms of the Customs Control Act for export or for another customs procedure that allows the export of the goods under that procedure; and 5
 (b) **[unless, except as otherwise provided in the rules, they are]** removed under the export or such other customs procedure to a place of exit for export [by a licensed remover in bond as contemplated in section 64D] in accordance with the Customs Control Act.”; 10
- (f) by the insertion after subsection (4) of the following subsection:
 “(4A) When goods are in terms of subsection (4) cleared for export or for another customs procedure that allows the export of the goods under that procedure, the goods become subject to the provisions of the Customs Control Act regulating the export or such other procedure.”; 15
- (g) by the deletion of subsections (5), (6) and (8);
- (h) by the substitution in subsection (9) for paragraph (a) of the following paragraph:
 “(a) No person shall, without the permission of the Commissioner, divert any goods cleared for export to a destination other than the destination declared on **[entry for export]** the clearance declaration, or deliver such goods or cause such goods to be delivered in the Republic **[or any other country in the common customs area].”;** 20
- (i) by the substitution in subsection (9) for paragraph (c) of the following paragraph:
 “(c) Where any person fails to comply with or contravenes any provision of this subsection the goods shall be liable to forfeiture in accordance with this Act or the Customs Control Act.”; and 25
- (j) by the deletion of subsection (10). 30

Amendment of Chapter IV of Act 91 of 1964

7. Chapter IV of the principal Act is hereby amended by the substitution for the chapter heading of the following chapter heading:

“CHAPTER IV

**[CUSTOMS AND EXCISE WAREHOUSES; STORAGE] LICENSING OF, 35
 AND MANUFACTURE AND STORAGE OF GOODS IN [CUSTOMS
 AND], EXCISE WAREHOUSES”**

Amendment of section 19 of Act 91 of 1964, as amended by section 3 of Act 95 of 1965, section 7 of Act 105 of 1969, section 13 of Act 45 of 1995, section 39 of Act 19 of 2001 and section 30 of Act 61 of 2008 40

8. Section 19 of the principal Act is hereby amended—
- (a) by the substitution for the section heading of the following section heading:
 “**[Customs and] Licensing of excise warehouses”;**
- (b) by the substitution for subsection (1) of the following subsection:
 “(1) The Commissioner may license **[at]** any place appointed for that purpose under the provisions of this Act **[,warehouses (to be known as customs and excise warehouses) approved by him for the storage of such dutiable imported or such dutiable locally-produced goods or for]** as— 45
 (a) an excise manufacturing warehouse for the manufacture of such dutiable goods from such imported or such locally-produced materials or from such imported and such locally-produced materials, as [he] the Commissioner may approve in respect of [each such] that warehouse; or 50
 (b) an excise storage warehouse for the storage of such dutiable locally-produced goods as the Commissioner may approve in respect of that warehouse.”; 55

- (c) by the substitution for subsection (2) of the following subsection—
- “(2) **[Such warehouses may be licensed either for the storage of dutiable goods (to be known as customs and excise storage warehouses) or for the manufacture of dutiable goods (to be known as customs and excise manufacturing warehouses), but the]** The 5
 Commissioner may license an excise storage warehouse and **[a]** an excise manufacturing warehouse on the same premises provided that, if the Commissioner so requires, they are separated in a manner approved by **[him]** the Commissioner.”;
- (d) by the deletion in subsection (3) of the words “customs and”; 10
- (e) by the deletion in subsection (4) of the words “customs and”;
- (f) by the substitution in subsection (5) for the words “a customs and excise warehouse” of the words “an excise warehouse”;
- (g) by the substitution in subsection (6) for the words “a customs and excise warehouse” of the words “an excise warehouse”; 15
- (h) by the substitution in subsection (8) for the words “a customs and excise warehouse” of the words “an excise warehouse”; and
- (i) by the substitution in subsection (9) for paragraph (a) of the following paragraph:
- “(a) Except with the permission of the Commissioner, which shall 20
 only be granted in circumstances which **[he]** on good cause shown **[considers to be]** are reasonable and subject to such conditions as **[he]** the Commissioner may impose in each case, no imported goods **[entered for storage]** delivered to an excise warehouse under an excise warehouse transit in terms of the Customs Control Act [or] and no 25
 excisable or fuel levy goods manufactured in **[a customs and]** an excise warehouse, excluding spirits or wine in the process of maturation or maceration, shall be retained in any [customs and] excise warehouse for a period of more than two years [from the time the imported goods were first entered for storage or] from the time the excisable or fuel 30
 levy goods were deemed to have been manufactured in terms of section 44 (2).”.

Amendment of section 19A of Act 91 of 1964, as inserted by section 40 of Act 19 of 2001, amended by section 64 of Act 30 of 2002 and section 31 of Act 61 of 2008

9. Section 19A of the principal Act is hereby amended— 35
- (a) by the substitution for the section heading of the following section heading:
 “**Special provision in respect of [customs and] excise warehouses in which excisable or fuel levy goods are manufactured or stored**”.
- (b) by the deletion in subsection (1)(a) and (b) of the words “customs and”, 40
 wherever they occur;
- (c) by the substitution in subsection (1)(c) for the words “a customs and excise manufacturing warehouse” of the words “an excise manufacturing ware-
 house”;
- (d) by the substitution in subsection (3) for paragraph (a) of the following 45
 paragraph:
- “(a) **[When this section comes into operation the]** The excisable or
 fuel levy goods concerned shall not be removed to any **[customs and excise]** warehouse unless such warehouse is another such excise
manufacturing warehouse licensed for or [a] an excise storage ware-
house licensed for any special or limited purpose as contemplated in 50
subsection (1).”;
- (e) by the deletion in subsection (3) of paragraph (b); and
- (f) by the substitution in subsection (4)(a) for the words “a customs and excise
 manufacturing warehouse” of the words “an excise manufacturing ware-
 house”. 55

Amendment of section 20 of Act 91 of 1964, as amended by section 4 of Act 95 of 1965, section 8 of Act 105 of 1969, section 1 of Act 86 of 1982, section 6 of Act 84 of 1987, section 14 of Act 59 of 1990, section 14 of Act 45 of 1995, section 59 of Act 30 of 1998, section 41 of Act 19 of 2001 and section 88 of Act 31 of 2005

10. Section 20 of the principal Act is hereby amended— 5
- (a) by the substitution for the section heading of the following section heading: 5
“Goods in [customs and] excise warehouses”;
- (b) by the substitution for subsection (1) of the following subsection: 5
“(1) (a) Imported goods may be removed to an excise warehouse only
if that warehouse is an excise manufacturing warehouse and the goods 10
are—
 (i) of a class or kind approved by the Commissioner for that
 warehouse; and
 (ii) cleared and released in terms of the Customs Control Act for
excise warehouse transit to that warehouse. 15
(aA) Any [dutiabale imported or] dutiable locally-produced goods
and any beverages produced from excisable spirits [in pursuance of any
permission granted under the provisions of section 31(2)], being
goods or beverages of a class or kind approved by the Commissioner in
respect of each warehouse, may be entered for storage in [a customs 20
and] an excise warehouse with deferment of payment of duty, and no
such goods or beverages shall be removed to or placed in [a customs
and] an excise warehouse until they have been so entered.
- (b) [Such] Any entry referred to in paragraph (aA) shall be deemed to**
be due entry in respect of such goods at the place of [importation or] 25
manufacture for the purposes of this Act.”;
- (c) by the substitution in subsection (2)(a) for subparagraph (i) of the following
 subparagraph:
“(i) Upon the [entry and landing] clearance of imported goods for
[storage in] excise warehouse transit to an excise manufacturing 30
warehouse or the transfer of dutiable locally-produced goods to [a
customs and] an excise warehouse or the transfer of dutiable manufact-
ured goods from [a customs and] an excise manufacturing warehouse
to [a customs and] an excise storage warehouse, the licensee of any such
warehouse [in] to which such goods are [stored] removed or [to which 35
such goods are] so transferred shall take and record an accurate account
of such goods, which shall include, subject to any deduction that may be
allowed under section 75 (18), the debiting to stock of any excess found
on receipt of such goods at such warehouse.”;
- (d) by the substitution in subsection (3) for the words “a customs and excise 40
 warehouse” of the words “an excise manufacturing warehouse”;
- (e) by the substitution for subsection (4) of the following subsection:
“(4) Subject to section 19A, no goods [which have been] stored or
manufactured in [a customs and] an excise warehouse shall be taken or
delivered from such warehouse except in accordance with the rules and 45
upon [due entry for any of the following purposes]—
 (a) due entry for home consumption and payment of any duty due
thereon;
 (b) **[rewarehousing in another customs and excise warehouse or]**
due entry for removal in bond [as provided] in terms of section 50
18(1)(a);
 (c) **[for export from customs and excise warehouse (including**
supply as stores for foreign-going ships or aircraft)] clearance
and release of the goods in terms of the Customs Control Act for
export or for another customs procedure that allows the export of
goods under that procedure.”; 55
- (f) by the substitution for subsection (4)*bis* of the following subsection:
“(4)*bis* (a) No person shall, without the written permission of the
Controller, divert any goods entered for removal from or delivery to [a
customs and] an excise warehouse, except goods entered for payment of 60
the duty due thereon, to a destination other than the destination declared

on entry of such goods or deliver or cause such goods to be delivered in the Republic except in accordance with the provisions of this Act.

(b) Paragraph (a) does not apply to imported goods cleared in terms of the Customs Control Act for excise warehouse transit to an excise manufacturing warehouse or to goods manufactured in an excise warehouse and cleared in terms of that Act for export under the export procedure or for another customs procedure that allows the export of goods under that procedure, and dealt with in accordance with that Act.”;

- (g) by the substitution in subsection (5) for the words “a customs and excise warehouse” of the words “an excise warehouse”; and
- (h) by the substitution in subsection (6) for the words “a storage warehouse” of the words “an excise storage warehouse”.

Amendment of section 21 of Act 91 of 1964, as amended by section 9 of Act 105 of 1969, section 44 of Act 30 of 2002, section 22 of Act 34 of 2004, section 1 of Act 10 of 2005 and section 17 of Act 21 of 2006

11. Section 21 of the principal Act is hereby amended—

- (a) by the substitution for the section heading of the following section heading:

“**Special [customs and] excise warehouses**”;

- (b) by the deletion in subsection (1) of the words “customs and”;

- (c) by the substitution for subsection (2) of the following subsection:

“(2) Unless the Commissioner otherwise indicates when licensing a special [customs and] excise warehouse for the storage or manufacture of goods, the provisions of this Act in respect of [customs and] excise [storage or manufacturing] warehouses or the storage or manufacture of goods in such warehouses, shall apply to such special warehouse and to the storage or manufacture of goods therein, as the case may be.”;

- (d) the deletion in subsection (3) of paragraphs (a), (b), (c) and (d); and

- (e) by the substitution in subsection (3)(e) for subparagraph (ii) of the following subparagraph:

“(ii) the person[, **other than the importer of duty free goods,**] who may store the goods specified in these rules in such warehouse;”.

Repeal of section 21A of Act 91 of 1964

12. Section 21A of the principal Act is hereby repealed.

Substitution of section 22 of Act 91 of 1964

13. The following section is hereby substituted for section 22 of the principal Act:

“**Samples of goods in [a customs and] excise [warehouse] warehouses**

22. The Controller may, in accordance with the rules, permit samples of goods in [a customs and] an excise warehouse to be taken by the licensee or the owner of such goods and may permit payment of duty thereon to be deferred until the goods from which such samples have been taken are entered for delivery from that warehouse for any purpose.”.

Substitution of section 23 of Act 91 of 1964

14. The following section is hereby substituted for section 23 of the principal Act:

“**[Storage or] Manufacture of prohibited goods**

23. The Commissioner may allow the [storage or] manufacture in [a customs and] an excise warehouse of goods the [importation,] manufacture or disposal of which is prohibited or restricted under any law, provided such goods are [stored or] manufactured in such warehouse for export or supply as stores for foreign-going ships or aircraft only.”.

Repeal of section 24 of Act 91 of 1964

15. Section 24 of the principal Act is hereby repealed.

Amendment of section 25 of Act 91 of 1964, as substituted by section 16 of Act 45 of 1995

16. Section 25 of the principal Act is hereby amended— 5

- (a) by the substitution for the section heading of the following section heading:
 “**Sorting, packing, etc., in [customs and] excise storage warehouses**”
- (b) by the substitution for the words “a customs and excise storage warehouse” of the words “an excise storage warehouse”.

Amendment of section 26 of Act 91 of 1964, as substituted by section 1 of Act 89 of 1983 and amended by section 17 of Act 45 of 1995

17. Section 26 of the principal Act is hereby amended by the substitution in subsection (1)(a) for the words “a customs and excise warehouse” of the words “an excise warehouse”.

Amendment of section 27 of Act 91 of 1964, as amended by section 10 of Act 105 of 1969, section 7 of Act 84 of 1987, section 15 of Act 59 of 1990 and section 18 of Act 45 of 1995

18. Section 27 of the principal Act is hereby amended—

- (a) by the substitution for the section heading of the following section heading:
 “**Special provisions in respect of [customs and] excise manufacturing warehouses**”; 20
- (b) by the substitution for subsection (1) of the following subsection:
 “(1) Subject to the provisions of this Act, goods liable to excise duty or fuel levy may not be manufactured except in terms of this section and except in [**a customs and**] an excise manufacturing warehouse licensed under this Act: Provided that spirits distilled by agricultural distillers shall be excluded from the requirement of manufacture in [**a customs and**] an excise manufacturing warehouse and that excisable goods may with the permission of the Commissioner be manufactured in a special [**customs and**] excise warehouse licensed under this Act.”; 25 30
- (c) by the deletion in subsection (2) of the words “customs and”;
- (d) by the substitution for subsection (3) of the following subsection:
 “(3) Any dutiable goods brought into and intended for use in [**a customs and**] an excise manufacturing warehouse in the manufacture of goods liable to excise duty or fuel levy shall be [**entered for home consumption**] cleared for home use in terms of the Customs Control Act, and any duty due thereon (including customs duty) shall be paid prior to such use: Provided that if such dutiable goods consists of imported goods removed to an excise warehouse under excise warehouse transit in terms of the Customs Control Act, only customs duty due on the goods must be paid prior to such use.”; 35 40
- (e) by the substitution for subsection (4) of the following subsection:
 “(4) No manufacturing of goods shall take place in [**a customs and**] an excise manufacturing warehouse until all premises and plant intended for use in connection with such manufacturing and the purpose for which they are to be used have been approved by and registered in terms of this Act with the Commissioner.”; 45
- (f) by the deletion in subsection (6) of the words “customs and”;
- (g) by the substitution in subsection (7)(a) for the words “a customs and excise manufacturing warehouse” of the words “an excise manufacturing warehouse”; 50
- (h) by the substitution in subsection (9) for the words “a customs and excise manufacturing warehouse” of the words “an excise manufacturing warehouse”; and

- (i) by the substitution in subsection (11) for the words “a customs and excise manufacturing warehouse” of the words “an excise manufacturing warehouse”.

Amendment of section 35 of Act 91 of 1964, as amended by section 3 of Act 103 of 1972 and section 23 of Act 45 of 1995

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19. Section 35 of the principal Act is hereby amended by the deletion of the words “customs and” wherever they occur.

Amendment of section 35A of Act 91 of 1964, as inserted by section 5 of Act 112 of 1977 and amended by section 24 of Act 45 of 1995 and section 135 of Act 45 of 2003

20. Section 35A of the principal Act is hereby amended— 10

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) distinguishing marks or numbers in addition to the stamp impression referred to in subsection (2) which must or must not appear on containers of cigarettes and cigarette tobacco removed from [a **customs and**] an excise warehouse for home consumption or for export under the export procedure in terms of the Customs Control Act or any other customs procedure in terms of that Act that allows the export of goods under that procedure;”;

- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“No licensee may remove any cigarettes or allow any cigarettes to be removed from [a **customs and**] an excise warehouse unless—”;

- (c) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) if removed for export under the export procedure or any other customs procedure that allows the export of goods under that procedure, such stamp impression does not appear on the containers; and”;

- (d) by the deletion in subsection (3) of the words “customs and”. 30

Amendment of section 36 of Act 91 of 1964, as substituted by section 25 of Act 45 of 1995 and amended by section 2 of Act 44 of 1996 and section 49 of Act 53 of 1999

21. Section 36 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (e) of the following paragraph:

“(e) If beer in bulk is removed [**in bond**] from [a **customs and**] an excise manufacturing warehouse otherwise than under an entry for home consumption in terms of this Act or a clearance for export in terms of the Customs Control Act, the alcoholic strength by volume shall be tested before removal from the warehouse and recorded on all documents of removal and reflected in the records required to be kept in terms of the rules.”.

Amendment of section 36A of Act 91 of 1964, as inserted by section 11 of Act 105 of 1969, substituted by section 16 of Act 59 of 1990 and amended by section 2 of Act 98 of 1993 and section 26 of Act 45 of 1995

22. Section 36A of the principal Act is hereby amended by the deletion of the words “customs and” wherever they occur. 45

Amendment of section 37 of Act 91 of 1964, as amended by section 8 of Act 95 of 1965, section 12 of Act 105 of 1969, section 7 of Act 98 of 1980, section 8 of Act 84 of 1987, section 17 of Act 59 of 1990, section 27 of Act 45 of 1995 and section 61 of Act 30 of 1998

23. Section 37 of the principal Act is hereby amended by the substitution for the words “a customs and excise warehouse”, wherever they occur, of the words “an excise warehouse”. 50

Amendment of section 37A of Act 91 of 1964, as substituted by section 50 of Act 53 of 1999 and as amended by section 122 of Act 60 of 2001

24. Section 37A of the principal Act is hereby amended—
- (a) by the deletion in subsection (1)(a) of the words “customs and”;
 - (b) by the substitution of subsection (2)(b) for the words “a customs and excise warehouse” of the words “an excise warehouse”; 5
 - (c) by the deletion in subsection (3)(d) of the words “customs and”;
 - (d) by the deletion in subsection (7)(a) of the words “customs and”;
 - (e) by the substitution in subsection (7)(b)(i) for the words “a customs and excise warehouse” of the words “an excise warehouse”; 10
 - (f) by the deletion in subsection (7)(d) of the words “customs and”; and
 - (g) by the substitution in subsection (9)(e)(i) for the words “a customs and excise warehouse” of the words “an excise warehouse”.

Amendment of section 38 of Act 91 of 1964, as amended by section 13 of Act 105 of 1969, section 5 of Act 71 of 1975, section 4 of Act 105 of 1976, section 2 of Act 89 of 1983, section 9 of Act 84 of 1987, section 18 of Act 59 of 1990, section 28 of Act 45 of 1995, section 3 of Act 44 of 1996, section 123 of Act 60 of 2001, section 91 of Act 60 of 2008 and section 32 of Act 61 of 2008 15

25. Section 38 of the principal Act is hereby amended—
- (a) by the deletion of subsections (1) and (3); 20
 - (b) by the substitution for subsection (4) of the following subsection:
 - “(4) (a) The Commissioner may by rule permit any excisable goods or fuel levy goods [, **and any class or kind of imported goods,**] which he may specify by rule, to be removed from [**a customs and**] an excise warehouse on the issuing by the owner of such goods of a prescribed certificate or an invoice or other document prescribed or approved by the Commissioner, and the payment of duty on such goods at a time and in a manner specified by rule, and such certificate, invoice or other document, shall for the purposes of section 20(4), and subject to the provisions of section 39(2A), be deemed to be a due entry from the time of removal of those goods from the [**customs and**] excise warehouse. 25
 - (b) No such goods may be removed from [**a customs and**] an excise warehouse or appropriated for use by the owner prior to or without the issuing of such certificate, invoice or other document: Provided that goods destined for export must before removal from the warehouse be cleared in terms of the Customs Control Act for export or another customs procedure that allows the export of goods under that customs procedure.”; and 35
 - (c) the deletion of subsections (5) and (6).

Repeal of section 38A of Act 91 of 1964 40

26. Section 38A of the principal Act is hereby repealed.

Amendment of section 39 of Act 91 of 1964, as amended by section 1 of Act 85 of 1968, section 14 of Act 105 of 1969, section 1 of Act 93 of 1978, section 4 of Act 110 of 1979, sections 8 and 15 of Act 98 of 1980, section 10 of Act 84 of 1987, section 3 of Act 69 of 1988, section 19 of Act 59 of 1990 and section 29 of Act 45 of 1995 45

27. Section 39 of the principal Act is hereby amended by—
- (a) the substitution for the section heading of the following section heading:
 - “**[Importer and exporter to produce documents and pay] Payment of duties**”;
 - (b) the substitution for subsection (1) of the following subsection: 50
 - “(1) A duty on any excisable goods, fuel levy goods, Road Accident Fund levy goods or environmental levy goods imported into the Republic must be paid in accordance with the Customs Duty Act as applied in terms of section 43B.”;

- (c) by the deletion of subsection (2);
- (d) by the substitution in subsection (2A)(a) for the words “a customs and excise warehouse” of the words “an excise warehouse”;
- (e) by the deletion of subsection (2B); and
- (f) by the substitution for subsection (3) of the following subsection: 5
 - “(3) The Commissioner may by rule specify the manner in which validating bills of entry referred to in subsection (2A) for goods of any such class or kind as may be specified in such rule[, **or goods imported or exported in such manner or such circumstances as may be so specified,**] shall be delivered.”. 10

Repeal of sections 39A, 39B, 39C and 39D of Act 91 of 1964

28. Sections 39A, 39B, 39C and 39D of the principal Act are hereby repealed.

Amendment of section 40 of Act 91 of 1964, as amended by section 9 of Act 95 of 1965, section 6 of Act 71 of 1975, section 5 of Act 105 of 1976, section 2 of Act 93 of 1978, section 4 of Act 86 of 1982, section 3 of Act 89 of 1983, section 11 of Act 84 of 1987, section 30 of Act 45 of 1995 and section 35 of Act 61 of 2008 15

29. Section 40 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) No entry of goods in an excise warehouse for home consumption or for removal in bond in terms of section 18(1)(a) shall be valid unless— 20
 - [(a) in the case of imported or exported goods, the description and particulars of the goods and the marks and particulars of the packages declared in that entry correspond with the description and particulars of the goods and the marks and particulars of the packages as reported in terms of section seven or twelve or in any certificate, permit or other document, by which the importation or exportation of those goods is authorised;]** 25
 - (b) the goods have been properly described in the entry by the denomination and with the characters, tariff heading and item numbers and circumstances according to which they are charged with duty or are admitted under any provision of this Act **[or are permitted to be imported or exported];** 30
 - (c) the true value of the goods on which duty is leviable or which is required to be declared under the provisions of this Act **[and the true territory of origin, territory of export and means of carriage]** have been declared; 35
 - (d) in the case of goods purchased by or sold, consigned or disposed of to any person in the Republic, a correct and sufficient invoice thereof, as prescribed, has been produced to the Controller; 40
 - (e) the correct duty due has been paid in the case of goods entered for home consumption **[: Provided that no bill of entry shall be invalid by reason of any deferment referred to in the proviso to section 39(1)(b)];**; 45
- (b) the substitution for subsection (2) of the following subsection: 45
 - “(2) Goods taken or delivered or removed by virtue of an entry which is not valid out of any **[ship, aircraft, vehicle, transit shed, container terminal, container depot, customs and]** excise warehouse or other place where they have been deposited with the sanction of the Controller, shall be deemed to be goods **[landed or]** taken without due entry thereof: 50

Provided that if such goods are included in any entry embracing more than one package, and it is shown that the invalidity arose without wilful default or negligence of anyone connected with the goods, and that such invalidity does not exist as to all the packages in that entry then only the packages not validly entered shall be deemed to have been **[landed or]** 55

taken without due entry;”;

- (c) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) Subject to the provisions of sections 76 and 77 and on such conditions as the Commissioner may impose and on payment of such fees as **[he]** the Commissioner may prescribe by rule— 5

- (i) **[an importer or exporter or]** a manufacturer of goods who enters goods in an excise warehouse for home consumption or removal in bond in terms of section 18(1)(a) shall on discovering that a bill of entry delivered by him or her—

(aa) does not in every respect comply with section 39; or 10

(bb) is invalid in terms of subsection (1) of this section, adjust that bill of entry without delay by means of—

(A) a voucher of correction; or

(B) cancellation of such bill of entry and substitution of a fresh bill of entry; or 15

(C) in such other manner as the Commissioner may prescribe; or

- (ii) if—

(aa) a bill of entry has been passed in error by reason of duty having been paid on goods intended for storage or manufacture in **[a customs and]** an excise warehouse under section 20 or for purposes of use under rebate of duty under section 75; or 20

(bb) **[an importer, exporter or]** a manufacturer who entered the goods, on good cause shown, requests substitution thereof by another bill of entry in circumstances other than those contemplated in item (aa), 25

the Commissioner may allow the **[importer, exporter or]** manufacturer concerned to adjust that bill of entry by substitution of a fresh bill of entry and cancellation of the original bill of entry, provided such goods, where a rebate of duty is being claimed, qualified at the time the duty was paid in all respects for that rebate: 30

Provided that acceptance of such voucher or fresh bill of entry shall not indemnify such **[importer, exporter or]** manufacturer against any fine or penalty provided for in this Act.”; and 35

- (d) by the substitution in subsection (3)(aA)(i) for the words “a customs and excise warehouse” of the words “an excise warehouse”.

Amendment of section 41 of Act 91 of 1964, as amended by section 15 of Act of 1969, section 6 of Act 112 of 1977, section 3 of Act 93 of 1978, section 5 of Act 86 of 1982, section 2 of Act 85 of 1986, section 12 of Act 84 of 1987, section 20 of Act 59 of 1990, sections 31 and 41 of Act 45 of 1995, section 17 of Act 32 of 2005 and section 22 of Act 21 of 2006 40

30. Section 41 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) The **[exporter of any goods imported into or exported from the Republic or the]** owner of any excisable goods, **[or]** fuel levy goods, Road Accident Fund goods or environmental levy goods manufactured in any **[customs and]** excise warehouse shall render a true, correct and sufficient invoice [,] and certificate of value **[and certificate of origin]** of such goods in such form and declaring such particulars of such goods as may be prescribed in the rules and as may be necessary to make a valid entry of such goods and shall furnish such additional information in connection with such invoice, certificate, particulars or goods as the Commissioner may, for the purposes of this Act, require at any time: 45
Provided that different requirements may be prescribed in the rules in respect of invoices and certificates relating to goods of different classes or kinds or goods to which different circumstances specified in the rules apply.”; 50
55

- (b) by the substitution for subsection (2) of the following subsection:
 “(2) Every **[exporter or]** manufacturer shall allocate to any goods of a class or kind specified in the rules for the purposes of this subsection and **[exported to or from or]** manufactured in the Republic a distinctive and permanent identification number, code, description, character or other mark in such manner and in accordance with such method as may be prescribed in the rules and such number, code, description, character or other mark shall be quoted or reproduced in all prescribed invoices relating to such goods and in all such other documents relating to such goods as may be specified in the rules.”; and
 (c) by the deletion of subsections (3) and (4).

Repeal of sections 42 and 43 of Act 91 of 1964

31. Sections 42 and 43 of the principal Act are hereby repealed.

Insertion of sections 43A and 43B in Act 91 of 1964

32. The following sections are hereby inserted in the principal Act after section 43:

“Excise Tariff

43A. There is an Excise Tariff consisting of the Schedules to this Act to the extent that they specify—
 (a) the excise duties, fuel levies, Road Accident Fund levies and environmental levies that are for purposes of this Act in force;
 (b) the classes and kinds of goods in respect of which those duties and levies are in force; and
 (c) the rates of, the requirements, conditions and relief applicable to, and other matters relating to, those duties.

Application of provisions of Customs Duty Act for purposes of duties leviable on imported goods in terms of Act

43B. (1) The provisions of the Customs Duty Act, excluding Chapters 2, 8 and 9, apply, with any necessary changes as the context may require, to any matter regulating or affecting dutiability of imported goods for purposes of this Act or duty on imported excisable goods, fuel levy goods, Road Accident Fund levy goods or environmental levy goods, as fully and effectually as if that matter were a matter regulating or affecting dutiability of, or an ordinary import duty on, imported goods in terms of that Act.
 (2) For purposes of such application—
 (a) any reference in the Customs Duty Act to—
 (i) an import duty or duty must be read as a reference to an excise duty, fuel levy, Road Accident Fund levy or environmental levy on imported goods, as may be applicable; or
 (ii) the Customs Tariff must be read as a reference to the Excise Tariff; and
 (b) the Commissioner may by rule make such technical modifications to a provision of the Customs Duty Act as may be necessary for the effective application of that provision as contemplated in subsection (1).
 (3) In the event of any inconsistency between a provision of this Act and a provision of the Customs Duty Act as applied in terms of subsection (1), the provision of this Act prevails.”

Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 10 of 1979, section 3 of Act 89 of 1984, section 5 of Act 52 of 1986, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993, section 33 of Act 45 of 1995, section 51 of Act 53 of 1999, section 136 of Act 45 of 2003, section 67 of Act 32 of 2004, section 12 of Act 9 of 2005, section 91 of Act 35 of 2007, and section 93 of Act 60 of 2008 5

33. Section 44 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 10
 “(1) Liability for duty on any excisable goods, fuel levy goods, Road Accident Fund levy goods or environmental levy goods imported into the Republic must, for the purposes of this Act, commence at the time applicable to the goods in accordance with the Customs Duty Act as applied in terms of section 43B.”;
- (b) by the deletion of subsections (3), (4), (4A), (5), (5A), (5B), (5C), (5D), (6), (7) and (9); 15
- (c) by the substitution in subsection (11)(a) for the word “two”, wherever it occurs, of the word “three”; and
- (d) by the deletion of subsection (12).

Amendment of section 45 of Act 91 of 1964, as amended by section 9 of Act 112 of 1977, section 7 of Act 86 of 1982, section 6 of Act 101 of 1985, section 1 of Act 61 of 1992 and section 35 of Act 45 of 1995 20

34. Section 45 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 25
 “(1) (a) Notwithstanding anything to the contrary in this Act contained, all excisable goods [**consigned to or imported into the Republic or stored or manufactured in a customs and excise warehouse or removed in bond shall upon being entered for home consumption**] or fuel levy goods shall be liable to such duties [**including anti-dumping duties, countervailing duties and safeguard duties specified in Schedule No. 2**] and new or increased duties referred to in section 58 (1) [**and duties imposed under the provisions of section 53**] as may [**at the time of such entry**] in terms of the Excise Tariff be leviable upon such goods— 30
- (i) in the case of imported goods, at the time applicable to the goods in accordance with the Customs Duty Act as applied in terms of section 43B; or 35
- (ii) in the case of goods manufactured in an excise warehouse, at the time of entry of the goods for home consumption in terms of this Act. 40
- (b) Notwithstanding the provisions of paragraph (a) but subject to the provisions of section 40, any dutiable goods [**imported into or**] manufactured in the Republic and which were removed, taken or delivered without due entry for home consumption having been made in respect of such goods, shall be liable to such duties as may in terms of the Excise Tariff be leviable upon such goods at the time of such removal, taking or delivery or at the time of assessment by an officer, whichever yields the greater amount of duty.”; and 45
- (b) by the deletion of subsection (2).

Repeal of sections 46 and 46A of Act 91 of 1964 50

35. Sections 46 and 46A of the principal Act are hereby repealed.

Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1965, section 17 of Act 105 of 1969, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 6 of Act 110 of 1979, section 9 of Act 98 of 1980, section 8 of Act 86 of 1982, section 15 of Act 84 of 1987, section 6 of Act 52 of 1988, section 6 of Act 68 of 1989, section 22 of Act 59 of 1990, section 3 of Act 61 of 1992, section 37 of Act 45 of 1995, section 4 of Act 44 of 1996, section 63 of Act 30 of 1998, section 53 of Act 53 of 1999, section 126 of Act 60 of 2001, section 104 of Act 74 of 2002, section 138 of Act 45 of 2003, section 68 of Act 32 of 2004, section 3 of Act 10 of 2005, section 90 of Act 31 of 2005, section 11 of Act 36 of 2007, section 94 of Act 60 of 2008

36. Section 47 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of this Act, duty shall be paid for the benefit of the National Revenue Fund on **[all imported goods,]** all excisable goods, **[all surcharge goods,]** all environmental levy goods, all fuel levy goods and all Road Accident Fund levy goods in accordance with the provisions of Schedule No. 1—

(a) in the case of imported goods, at the time applicable to the goods in accordance with the Customs Duty Act as applied in terms of section 43B; or

(b) in the case of goods manufactured in an excise warehouse, at the time of entry for home consumption of such goods: Provided that the Commissioner may condone any underpayment of such duty where the amount of such underpayment **[in the case of—**

(a) **goods imported by post is less than fifty cents;**

(b) **goods imported in any other manner is less than five rand;**
or

(c) **excisable goods]** is less than two rand;”;

(b) by the deletion of subsections (3), (5) and (6);

(c) by the substitution in subsection (9)(a)(i) for item (aa) of the following item: “(aa) the tariff headings, tariff sub-headings or tariff items or other items of any Schedule under which any **[imported goods,]** goods manufactured in the Republic **[or goods exported]** shall be classified for purposes of this Act; or”;

(d) by the deletion in subsection (9) of paragraph (f);

(e) by the substitution in subsection (10) for the words “two years” of the words “three years”;

(f) by the substitution in subsection (11)(a) for the words “two years” of the words “three years”;

(g) by the substitution in subsection (11) for paragraph (b) of the following paragraph:

“(b) The expression **“inspection of any books, accounts and other documents”**, or any other reference to an inspection in this Act shall be taken to include any act done by an officer in the exercise of any duty imposed or power conferred by this Act or the Customs Control Act for the purposes of the physical examination of goods and documents upon or after or in the absence of entry, the issue of stop notes or other reports, the making of assessments and any pre- or post-importation audit, investigation, inspection or verification of any such books, accounts and other documents required to be kept under this Act.”; and

(h) by the addition of the following subsections:

“(14) Subsections (8) to (13) do not apply to excisable goods, fuel levy goods, Road Accident Fund levy goods and environmental levy goods imported into the Republic, and the Customs Duty Act, as applied in terms of section 43B, applies to such goods in relation to any matter dealt with in those subsections.

(15) Any reference in this section to Chapter XA must be read as a reference to Chapter 37 of the Customs Control Act.”.

Substitution of section 47A of Act 91 of 1964, as inserted by section 7 of Act 101 of 1985, substituted by section 4 of Act 98 of 1993 and amended by section 38 of Act 45 of 1995

37. The following section is hereby substituted for section 47A of the principal Act:

“Prohibition of certain acts in respect of goods not duly entered 5

47A. (1) Subject to the provisions of this Act, no person shall remove, receive, take, deliver or deal with or in any **[imported or]** excisable goods, environmental levy goods, [or] fuel levy goods or Road Accident Fund levy goods, unless such goods have been duly entered.”.

Repeal of sections 49, 50, 50A and 51 of Act 91 of 1964 10

38. Sections 49, 50, 50A and 51 of the principal Act are hereby repealed.

Amendment of section 52 of Act 91 of 1964, as inserted by section 24 of Act 59 of 1990 and amended by section 41 of Act 45 of 1995 and section 13 of Act 36 of 2007

39. Section 52 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph: 15

“(a) Notwithstanding anything to the contrary in this Act contained, any fuel levy goods which are removed to the territory of a party to any customs union agreement concluded in terms of section 49 or brought into the Republic from any such territory, shall, if a fuel levy has not been imposed by such party, be deemed for fuel levy purposes to be goods exported from and goods imported into the Republic, respectively, **[and the provisions of this Act relating to the exportation from and importation of goods into the Republic shall, subject to such arrangements as the Commissioner may determine, apply to those goods]** otherwise than under that customs union agreement until such time as such fuel levy is imposed by that party as provided in this Act.”. 20 25

Repeal of section 53 of Act 91 of 1964

40. Section 53 of the principal Act is hereby repealed.

Amendment of section 54 of Act 91 of 1964, as substituted by section 13 of Act 112 of 1977, and amended by section 43 of Act 45 of 1995, section 141 of Act 45 of 2003 and section 19 of Act 32 of 2005 30

41. Section 54 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

- “(2) **[No person may import any]** Imported cigarettes **[unless]**— 35
- (a) **[if entered for home consumption,]** cleared for home use in terms of the Customs Control Act must have a stamp impression determined by the Commissioner **[has been made]** on their containers **[/ packages]; [or]**
- (b) **[if entered for storage in a customs and excise warehouse]** cleared in terms of the Customs Control Act for warehousing may not have such stamp impression **[does not appear]** on **[the containers/packages]** their containers if warehoused for export; and 40
- (c) **[the cigarettes]** referred to in paragraph (a) or (b) must otherwise comply with the requirements as may be prescribed by rule.”; 45

(b) by the substitution for subsection (3) of the following subsection: 45

“(3) No imported cigarettes shall be sold or offered for sale, **[or]** disposed of, or removed from the customs **[and excise]** warehouse concerned, except in accordance with the provisions of this Act and the Customs Control Act.”; and

(c) by the substitution for subsection (4) of the following subsection:

“(4) (a) No cigarettes in containers bearing the stamp impression referred to in subsection [2] (2)(a), may be **[entered for removal in bond as contemplated in section 18]** cleared in terms of the Customs Control Act for international transit through the Republic. 5

(b) Any cigarettes in containers bearing such stamp impression so **[entered for removal in bond]** cleared for international transit shall be liable to forfeiture in accordance with the provisions of this Act or the Customs Control Act.”.

Amendment of section 54B of Act 91 of 1964, as inserted by section 139 of Act 45 of 2003 and amended by section 32 of Act 16 of 2004 and section 14 of Act 36 of 2007 10

42. Section 54B of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The environmental levy shall be levied at a rate as may be specified in any item of Part 3 of Schedule No. 1 and the environmental levy so specified in such item shall be payable in addition to any duty, including a customs duty, prescribed in respect of the goods concerned **[in any heading or subheading of Part 1 or Part 2 of Schedule No. 1]**.”. 15

Substitution of section 54C of Act 91 of 1964, as inserted by section 139 of Act 45 of 2003 20

43. The following section is hereby substituted for section 54C of the principal Act:

“Application of other provisions of this Act

54C. [(1)] Subject to such exceptions and adaptations as may be prescribed in this Chapter, any Schedule or any rule, the provisions of this Act relating to— 25

(a) (i) the importation of excisable goods and imported excisable goods; and

(ii) the payment of duty on imported excisable goods; or

(b) (i) the manufacture of excisable goods; and 30

(ii) the entry for home consumption, removal from any [customs and] excise manufacturing warehouse and payment of duty contemplated in section 19A,

shall apply *mutatis mutandis* to environmental levy goods imported into or manufactured in the Republic.”.

Amendment of section 54E of Act 91 of 1964, as inserted by section 139 of Act 45 of 2003 35

44. Section 54E of the principal Act is hereby amended by the substitution for the words “a customs and excise manufacturing warehouse” of the words “an excise manufacturing warehouse”.

Repeal of Chapter VI of Act 91 of 1964 40

45. Chapter VI of the principal Act is hereby repealed.

Repeal of sections 58 and 59 of Act 91 of 1964

46. Sections 58 and 59 of the principal Act are hereby repealed.

Insertion of chapter heading for Chapter VIII and section 58A in Act 91 of 1964

47. The following chapter heading and section are hereby inserted in the principal Act after section 58: 45

“CHAPTER VIII

REGISTRATION, LICENSING AND ACCREDITED CLIENTS

Application of this Act to registrations, licences and accredited clients regulated by Customs Control Act

58A. (1) As from the effective date as defined in section 926 of the Customs Control Act, this Act must be read as no longer applying, subject to Part 3 of Chapter 41 of the Customs Control Act, to—

- (a) the registration of persons for a purpose or activity referred to in sections 601 to 607 of that Act;
- (b) the licensing of persons, premises and facilities for a purpose or activity referred to in sections 630 to 634 of that Act; or
- (c) the granting of accredited status to persons who are licensees or registered persons in terms of that Act.

(2) Subsection (1) may not be read as preventing any existing registration, licence or accredited status issued in terms of this Act for a purpose or activity referred to in that subsection before the effective date, from continuing to be in force after that date to the extent as provided in Part 3 of Chapter 41 of that Act.”.

Amendment of Chapter VIII in Act 91 of 1964, as substituted by section 44 of Act 19 of 2001

48. Chapter VIII of the principal Act is hereby amended by the deletion of the chapter heading.

Amendment of section 59A of Act 91 of 1964, as inserted by section 45 of Act 19 of 2001 and amended by section 188 of Act 60 of 2001 and section 47 of Act 30 of 2002

49. Section 59A of the principal Act is hereby amended by the addition in subsection (1) after paragraph (b) of the following paragraph:

“(c) When prescribing rules in terms of paragraph (b) the Commissioner may apply *mutatis mutandis* any of the provisions of Chapter 28 and other relevant provisions of the Customs Control Act to registrations in terms of this section.”.

Amendment of section 60 of Act 91 of 1964, as substituted by section 20 of Act 105 of 1969, and amended by section 11 of Act 86 of 1982, section 25 of Act 59 of 1990, section 9 of Act 19 of 1994, section 46 of Act 19 of 2001 and section 48 of Act 30 of 2002

50. Section 60 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) The activities for which a licence is required, the persons who are required to license, the procedures, conditions, which may include the furnishing of security, and any other requirements relating to such licence, if not prescribed elsewhere in this Act, may be prescribed in the Notes to the item in which such licence is specified in Schedule No. 8 and any rules made by the Commissioner under the provisions of this Act: Provided that the Minister, when prescribing notes in a Schedule, or the Commissioner, when prescribing rules, may apply *mutatis mutandis* any of the provisions of Chapter 29 of the Customs Control Act and other relevant provisions, to licences and licensing in terms of this section.”.

Amendment of section 61 of Act 91 of 1964, as amended by section 22 of Act 84 of 1987 and section 107 of Act 74 of 2002

51. Section 61 of the principal Act is hereby amended—

- (a) by the substitution for the section heading of the following section heading:

“[Customs and excise] Excise warehouse licences”
- (b) by the substitution in subsection (1) for the words “a customs and excise warehouse” of the words “an excise warehouse”; and

- (c) by the deletion of the words “customs and” wherever they occur in subsections (3) and (4).

Amendment of section 64 of Act 91 of 1964

52. Section 64 of the principal Act is hereby amended—
- (a) by the substitution for the words “a customs and excise manufacturing warehouse” of the words “an excise manufacturing warehouse”; and
 - (b) by the substitution for the words “special customs and excise warehouse” of the words “special excise warehouse”.

Repeal of section 64A of Act 91 of 1964

53. Section 64A of the principal Act is hereby repealed. 10

Amendment of section 64B of Act 91 of 1964, as inserted by section 19 of Act 112 of 1977, as substituted by section 46 of Act 45 of 1995 and amended by section 58 of Act 53 of 1999 and section 47 of Act 19 of 2001

54. Section 64B of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 15
- “(1) (a) No person shall, for **[the purposes of this Act, for]** reward, **[make entry or deliver a bill of entry relating to any goods]** on behalf of any principal contemplated in section 99(2), enter any goods in an excise warehouse for home consumption or for removal in bond in terms of section 18(1)(a), unless that person is licensed as a clearing agent in terms of subsection (2). 20
- (b) A person licensed in terms of the Customs Control Act as a customs broker to clear goods on behalf of other persons, must for the purposes of this Act be regarded to have been licensed as a clearing agent in terms of subsection (2).”.

Repeal of section 64C of Act 91 of 1964

55. Section 64C of the principal Act is hereby repealed. 25

Amendment of section 64D of Act 91 of 1964, as inserted by section 48 of Act 19 of 2001, and as amended by section 49 of Act 30 of 2002

56. Section 64D of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) (a) No person, except if exempted by rule, shall remove any goods in an excise warehouse in bond in terms of section 18(1)(a) [or for export in terms of section 18A, or any other goods that may be specified by rule] unless licensed as a remover of goods in bond in terms of subsection (3). 30
- (b) A person licensed in terms of the Customs Control Act as a carrier must for the purposes of this Act be regarded to have been licensed as a remover in bond in terms of subsection (3).”.

Amendment of section 64F of Act 91 of 1964, as inserted by section 108 of Act 74 of 2002

57. Section 64F of the principal Act is hereby amended—
- (a) by the substitution for the section heading of the following section heading: 40

“Licensing of distributors of fuels obtained from [the licensed] licensee of [a customs and] excise manufacturing warehouse”
 - (b) by the substitution in paragraph (b) of the definition of “licensed distributor” in subsection (1) for the words “a customs and excise manufacturing warehouse” of the words “an excise manufacturing warehouse”; and 45
 - (c) by the substitution in subsection (2)(a) for the words “a customs and excise warehouse” of the words “an excise warehouse”.

Repeal of sections 64G, 64H, 64I, 64J, 64K, 64L and 64M of Act 91 of 1964

58. Sections 64G, 64H, 64I, 64J, 64K, 64L and 64M of the principal Act are hereby repealed.

Amendment of section 65 of Act 91 of 1964, as substituted by section 13 of Act 86 of 1982 and amended by section 8 of Act 101 of 1985, section 8 of Act 52 of 1986, section 9 of Act 68 of 1989, section 48 of Act 45 of 1995, section 5 of Act 44 of 1996, section 59 of Act 53 of 1999, section 128 of Act 60 of 2001, section 144 of Act 45 of 2003, section 70 of Act 32 of 2004, section 93 of Act 35 of 2007 and section 96 of Act 60 of 2008

59. Section 65 of the principal Act is hereby amended— 10

(a) by the substitution for subsection (1) of the following subsection:

“(1) **Subject to the provisions of this Act, the value for customs duty purposes of any imported goods shall, at the time of entry for home consumption, be the transaction value thereof, within the meaning of section 66]** For the purpose of assessing duty on goods imported into the Republic, section 43B applies and the value of those goods shall be taken to be the same as the value determined for those goods in terms of the Customs Duty Act.”; 15

(b) by the deletion of subsections (2), (3), (4), (5), (6), (7) and (7A);

(c) by the substitution for subsection (8) of the following subsection: 20

“(8) Notwithstanding the provisions of [subsections] subsection (1) [and (4)], the value for the purposes of the duty specified in Section B of Part 2 of Schedule No. 1 shall, in respect of imported goods be the [transaction value thereof] the value ascribed to the goods in terms of subsection (1) plus 15 per cent of such value, plus any non-rebated customs duty payable in terms of Part 1 of Schedule No. 1 and any excise duty payable in terms of Section A of Part 2 of Schedule 1 on such goods, but excluding the duty specified in the said Section B of Part 2 of Schedule 1 on such goods.”; and 25

(d) by the deletion of subsection (9). 30

Repeal of sections 66 and 67 of Act 91 of 1964

60. Sections 66 and 67 of the principal Act are hereby repealed.

Amendment of section 69 of Act 91 of 1964, as amended by section 22 of Act 105 of 1969, section 6 of 1985, section 7 of Act 69 of 1988, section 12 of Act 68 of 1989, section 1 of Act 105 of 1992, section 3 of Act 105 of 1992, section 6 of Act 98 of 1993, section 6 of Act 44 of 1996, section 61 of Act 53 of 1999, section 49 of Act 19 of 2001, section 129 of Act 60 of 2001, section 145 of Act 45 of 2003, section 71 of Act 32 of 2004 and section 94 of Act 35 of 2007

61. Section 69 of the principal Act is hereby amended—

(a) by the substitution for the words “Chapter XA” wherever they occur of the words “Chapter 37 of the Customs Control Act”; 40

(b) by the substitution for the words “section 66(2)(a)” wherever they occur of the words “subsection (8)”;

(c) by the deletion in subsection (5) of paragraph (b);

(d) by the substitution for the words “this Act” wherever they occur in subsection (7)(b) of the words “this Act or the Customs Control Act”; and 45

(e) by the addition of the following subsection:

“(8) For the purposes of this section, two persons shall be deemed to be related only if—

(a) they are officers or directors of one another’s businesses; 50

(b) they are legally recognised partners in business;

(c) the one is employed by the other;

(d) any person directly or indirectly owns, controls or holds five per cent or more of the equity share capital of both of them;

(e) one of them directly or indirectly controls the other; 55

(f) both of them are directly or indirectly controlled by a third person;

- (g) together they directly or indirectly control a third person; or
 (h) they are members of the same family.”.

Repeal of sections 71, 72, 73, 74 and 74A of Act 91 of 1964

62. Sections 71, 72, 73, 74 and 74A of the principal Act are hereby repealed.

Amendment of section 75 of Act 91 of 1964, as amended by section 3 of Act 45 of 1955, section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 24 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act 112 of 1977, section 8 of Act 93 of 1978, section 10 of Act 110 of 1979, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989, section 29 of Act 59 of 1990, section 13 of Act 61 of 1992, section 7 of Act 98 of 1993, section 10 of Act 19 of 1994, section 53 of Act 45 of 1995, section 61 of Act 30 of 2000, section 50 of Act 19 of 2001, section 130 of Act 60 of 2001, section 75 of Act 30 of 2002, section 109 of Act 74 of 2002, section 146 of Act 45 of 2003, section 27 of Act 34 of 2004, section 92 of Act 31 of 2005, section 70 of Act 20 of 2006, section 95 of Act 35 of 2007 and section 99 of Act 60 of 2008

63. Section 75 of the principal Act is hereby amended—

- (a) by the deletion of subsection (4);
 (b) by the substitution in subsection (4A)(f) for the words “this Act”, wherever they occur, of the words “this Act, the Customs Control Act, the Customs Duty Act”;
 (c) by the substitution in subsection (4A)(h)(i) for the words “this Act” of the words “this Act or the Customs Control Act”;
 (d) by the substitution in subsection (17) for the words “this Act”, where they occur for the first time, of the words “this Act or the Customs Control Act”;
 (e) by the substitution in subsection (20) for the words “this Act” of the words “this Act or the Customs Control Act”;
 (f) by the substitution in subsection (21) for the words “two years” of the words “three years”;
 (g) by the deletion of subsection (22); and
 (h) by the addition of the following subsections:
 “(23) As from the effective date as defined in section 926 of the Customs Control Act, this section and its rules must be read as no longer applying to customs duties and to rebates, drawbacks and refunds of customs duty, except to the extent as provided in Part 3 of Chapter 41 of the Customs Control Act.
 (24) This section applies to ordinary levies referred to in section 48G subject to such conditions, requirements and exceptions as the Commissioner may determine by rule.”.

Repeal of section 75A of Act 91 of 1964

64. Section 75A of the principal Act is hereby repealed.

Amendment of section 76 of Act 91 of 1964, as substituted by section 30 of Act 59 of 1990 and as amended by section 5 of Act 105 of 1992 and section 54 of Act 45 of 1995

65. Section 76 of the principal Act is hereby amended—

- (a) by the substitution for the section heading of the following section heading:
 “**General refunds and drawbacks [in respect of imported goods, excisable goods]**”;
 (b) by the substitution for subsection (1) of the following subsection:
 “(1) No refund or drawback of any duty or other charge in respect of [imported goods,] excisable goods, [surcharge goods or] fuel levy goods, Road Accident Fund levy goods or environmental levy goods, other than a refund or drawback provided for under section 75 or 77, shall be paid or granted except in accordance with—

- (a) the provisions of the Customs Duty Act as applied in terms of section 43B, if those goods are imported goods; or
- (b) the other provisions of this section, if those goods are manufactured in the Republic.”;
- (c) by the insertion after subsection (1) of the following subsection: 5
 “(1A) If a person intends to apply in respect of the same goods for a refund or drawback of a duty or other charge referred to in subsection (1) and to which paragraph (a) of that subsection applies, and for a refund or drawback of a customs duty or other charge to which the Customs Duty Act applies, the applications must be submitted as a combined application and procedurally dealt with as a single application in terms of the Customs Duty Act.”; 10
- (d) by the substitution in subsection (2) for paragraph (f) of the following paragraph:
 “(f) the substitution of any bill of entry in terms of section 40(3) or of a clearance declaration in terms of the Customs Control Act; or”; 15
- (e) by the substitution in subsection (2) for paragraph (g) of the following paragraph:
 “(g) the duty having been reduced or withdrawn [as provided for in section 48 (2) or (2A), 56 (2), 56A (2) or 57 (2); or].”; 20
- (f) by the deletion in subsection (2) of paragraph (h);
- (g) by the substitution in subsection (4)(a) for the words “two years” of the words “three years”; and
- (h) by the substitution for subsection (5) of the following subsection: 25
 “(5) If, after considering any application for a refund or payment in terms of this section, the Commissioner is satisfied that the applicant is entitled to any such refund or payment, the Commissioner may pay to the applicant the amount due to [him] the applicant: Provided that no refund shall be made under this section if [in the case of goods imported by post,] the amount thereof [is less than fifty cents or, in the case of goods imported in any other manner, less than five rand or], in the case of excisable goods manufactured in the Republic, is less than two rand, unless the Commissioner is satisfied that exceptional circumstances exist which warrant such refund.”. 30

Amendment of section 76B of Act 91 of 1964, as substituted by section 29 of Act 34 of 2004 and amended by section 20 of Act 32 of 2005 and section 100 of Act 60 of 2008 35

66. Section 76B of the principal Act is hereby amended—

- (a) by the substitution in subsection (1)(a) for the words “two years” of the words “three years”, wherever they occur; 40
- (b) by the substitution in subsection (1)(b) for the words “two years” of the words “three years”;
- (c) by the substitution in subsection (1)(d) for the words “two years” of the words “three years”; and
- (d) by the addition after subsection (3) of the following subsection: 45
 “(4) This section does not apply to refunds and drawbacks of duty on excisable goods, fuel levy goods, Road Accident Fund levy goods and environmental levy goods imported into the Republic, and the Customs Duty Act, as applied in terms of section 43B, applies in relation to any matter dealt with in this section with regard to refunds and drawbacks on such goods.”. 50

Amendment of section 77 of Act 91 of 1964, as substituted by section 31 of Act 59 of 1990 and amended by section 55 of Act 45 of 1995

67. Section 77 of the principal Act is hereby amended—

- (a) by the substitution in paragraph (a) for the words “a customs and excise warehouse” of the words “an excise warehouse”; and 55
- (b) by the substitution in paragraph (a) for the words “two years” of the words “three years”.

Repeal of Chapters XA and XB of Act 91 of 1964

68. Chapters XA and XB of the principal Act are hereby repealed.

Amendment of section 79 of Act 91 of 1964, as amended by section 2 of Act 64 of 1974, section 11 of Act 52 of 1986, section 7 of Act 105 of 1992 and section 56 of Act 45 of 1995

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69. Section 79 of the principal Act is hereby amended by the deletion in subsection (1) of paragraphs (e), (f) and (g).

Repeal of sections 81, 86A, 87, 88, 89 and 90 of Act 91 of 1964

70. Sections 81, 86A, 87, 88, 89 and 90 of the principal Act are hereby repealed.

Amendment of section 93 of Act 91 of 1964, as substituted by section 150 of Act 45 of 2003

71. Section 93 of the principal Act is hereby amended by the deletion of subsections (1) and (3).

Repeal of sections 96, 96A and 97 of Act 91 of 1964

72. Sections 96, 96A and 97 of the principal Act are hereby repealed.

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Substitution of section 98 of Act 91 of 1964, as substituted by section 33 of Act 112 of 1977

73. The following section is hereby substituted for section 98 of the principal Act:

“Liability of principal for acts of agent

98. Every [~~importer, exporter, master, container operator, pilot,~~] manufacturer of excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods, licensee, remover of goods in bond or other principal shall, for the purposes of this Act, be responsible for any act done by an agent acting on his behalf, whether within or outside the Republic.”.

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Amendment of section 99 of Act 91 of 1964, as amended by section 15 of 95 of 1965, section 17 of Act 85 of 1968, section 7 of Act 98 of 1970, section 34 of Act 112 of 1977, section 12 of Act 110 of 1979, section 24 of Act 86 of 1982, section 62 of Act 45 of 1995, section 71 of Act 30 of 1998, section 68 of Act 53 of 1999, section 138 of Act 60 of 2001, section 110 of Act 74 of 2002 and section 31 of Act 34 of 2004

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74. Section 99 of the principal Act is hereby amended by the addition after subsection (5) of the following subsection:

“(6) As from the effective date as defined in section 926 of the Customs Control Act, this section and its rules must be read as no longer applying to persons to whom this Act from that date has ceased to apply, except to the extent as provided in Part 3 of Chapter 41 of the Customs Control Act.”.

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Amendment of section 99A of Act 91 of 1964, as inserted by section 69 of Act 53 of 1999

75. Section 99A of the principal Act is hereby amended by the addition after subsection (2) of the following subsection:

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“(3) As from the effective date as defined in section 926 of the Customs Control Act, this section and its rules must be read as no longer applying to persons to whom this Act from that date has ceased to apply, except to the extent as provided in Part 3 of Chapter 41 of the Customs Control Act.”.

Repeal of sections 101A and 101B of Act 91 of 1964

76. Sections 101A and 101B of the principal Act are hereby repealed.

Amendment of section 102 of Act 91 of 1964, as amended by section 16 of Act 95 of 1965, section 12 of Act 57 of 1966, section 19 of Act 85 of 1968, section 29 of Act 105 of 1969, section 35 of Act 112 of 1977, section 12 of Act 105 of 1985, section 30 of Act 84 of 1987, section 34 of Act 59 of 1990, and section 64 of Act 45 of 1995 5

77. Section 102 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Any person selling, offering for sale or dealing in **[imported or]** excisable goods, environmental levy goods, [or] fuel levy goods or Road Accident Fund levy goods or any person removing the same, or any person having such goods entered in his books or mentioned in any documents referred to in section 75(4A) or 101, shall, when requested by an officer, produce proof as to the person from whom the goods were obtained and, if **[he]** the person is the importer or manufacturer or owner, as to the place where the duty due thereon was paid, the date of payment, the particulars of the entry for home consumption or clearance for excise warehouse transit and the marks and numbers of the cases, packages, bales and other articles concerned, which marks and numbers shall correspond to the documents produced in proof of the payment of the duty.”; 10 15 20

(b) by the deletion in subsection (2) of the words “as an admission”; and

(c) by the deletion of subsections (3), (4) and (5).

Amendment of section 105 of Act 91 of 1964, as substituted by section 2 of Act 111 of 1991 and amended by section 65 of Act 45 of 1995, section 72 of Act 30 of 1998, section 1 of Act 32 of 1999, section 63 of Act 30 of 2000, section 111 of Act 74 of 2002, section 35 of Act 16 of 2004, section 93 of Act 31 of 2005 and section 72 of Act 20 of 2006 25

78. Section 105 of the principal Act is hereby amended—

(a) by the insertion after the section number of the following number: 30

“(1)”; and

(b) by the addition of the following subsection:

“(2) As from the effective date as defined in section 926 of the Customs Control Act—

(a) subsection (1) must be read as no longer applying to interest on outstanding amounts payable in terms of this Act in respect of imported goods, except to the extent as provided in Part 3 of Chapter 41 of the Customs Control Act; and 35

(b) the Customs Duty Act, as applied in terms of section 43B, applies in relation to any matter dealt with in subsection (1) with regard to interest on outstanding amounts payable in terms of this Act in respect of imported goods.”. 40

Amendment of section 106 of Act 91 of 1964, as amended by section 30 of Act 105 of 1969, section 35 of Act 59 of 1990, section 66 of Act 45 of 1995 and section 39 of Act 61 of 2008 45

79. Section 106 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) An officer may **[on entry of any imported goods or goods for export or]** during the manufacture of any excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods, or at any time during or after such [entry or] manufacture, take, without payment, from any person in possession of such **[imported goods or goods for export or of any]** manufactured or partly manufactured **[excisable]** goods samples of such **[imported, manufactured or partly manufactured]** goods or of materials intended for the manufacture of **[excisable]** such goods or of goods used under the 50 55

provisions of Chapter X, for examination or for ascertaining the duties payable thereon or for such other purpose as the Commissioner may prescribe by rule, and those samples shall be dealt with and accounted for in such manner as the Commissioner may direct.

(b) Paragraph (a) may not be read as affecting an officer's powers relating to the taking of samples in terms of the Customs Control Act." 5

Amendment of section 107 of Act 91 of 1964, as amended by section 20 of Act 85 of 1968, section 31 of Act 105 of 1969, section 11 of Act 93 of 1978, section 6 of Act 89 of 1983, section 67 of Act 45 of 1995, section 33 of Act 34 of 2004, section 31, section 11 of Act 10 of 2006 and section 34 of Act 21 of 2006 10

80. Section 107 of the principal Act is hereby amended—

(a) by the substitution in subsection (1)(a) for subparagraph (i) of the following subparagraph: 15

“(i) the [**importer, exporter,**] manufacturer, owner or other person, whoever is in control of the goods, except in the case of goods examined at [**a customs and**] an excise warehouse, where such handling of and dealing with goods shall be performed at the expense and risk of the owner thereof or the licensee of such warehouse;”;

(b) by the deletion in subsection (1)(a) of subparagraphs (ii) and (iii); 20

(c) by the deletion in subsection (1) of paragraph (b);

(d) by the substitution in subsection (2)(a) for subparagraph (i) of the following subparagraph:

“(i) Subject to the provisions of this Act, the Commissioner shall not, except on such conditions, including conditions relating to security, as may be determined by him or her, allow goods to pass from his or her control until the provisions of this Act [**or any law relating to the importation, exportation, transshipment or transit carriage through the Republic of goods,**] and any applicable provisions of the Customs Control Act have been complied with in respect of such goods;”;

(e) by the deletion in subsection (2)(a) of subparagraph (iii); and 30

(f) by the deletion in subsection (3) of the words “importer, exporter”, wherever they occur.

Repeal of sections 109, 111 and 112 of Act 91 of 1964

81. Sections 109, 111 and 112 of the principal Act are hereby repealed. 35

Amendment of section 113 of Act 91 of 1964, as amended by section 14 of Act 57 of 1966, section 11 of Act 103 of 1972, section 5 of Act 68 of 1973, section 49 of Act 42 of 1974, section 25 of Act 86 of 1982, section 7 of Act 89 of 1983, section 31 of Act 84 of 1987, section 17 of Act 68 of 1989, section 14 of Act 105 of 1992, section 12 of Act 98 of 1993, section 71 of Act 45 of 1995 and section 73 of Act 30 of 1998 40

82. Section 113 of the principal Act is hereby amended by the deletion of subsection (2).

Repeal of section 113A of Act 91 of 1964

83. Section 113A of the principal Act is hereby repealed.

Amendment of section 117 of Act 91 of 1964, as substituted by section 35 of Act 105 of 1969, and as amended by section 20 of Act 52 of 1986, section 34 of Act 84 of 1987, and section 38 of Act 59 of 1990

84. Section 117 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of the words “of the import and export trade of the Republic and”; and 50

(b) by the deletion in subsection (2) of paragraph (a).

Repeal of section 118 of Act 91 of 1964

85. Section 118 of the principal Act is hereby repealed.

Amendment of section 120 of Act 91 of 1964, as amended by section 36 of Act 105 of 1969, section 35 of Act 84 of 1987, section 39 of Act 59 of 1990, section 11 of Act 19 of 1994, section 73 of Act 45 of 1995, section 74 of Act 30 of 1998, section 35 of Act 21 of 2006 and section 24 of Act 36 of 2007 5

86. Section 120 of the principal Act is hereby amended—

- (a) by the deletion of paragraph (c) of subsection (1);
- (b) by the substitution in paragraph (d) of subsection (1) for the words “customs and excise warehouses” of the words “excise warehouses”; 10
- (c) by the substitution in subsection (1) for paragraph (e) of the following paragraph:

“(e) as to [the importation, exportation, transit or coastwise carriage of goods,] the entry of goods for purposes of this Act, and the payment of duties and other charges and fees [the costs which shall, for the purposes of section 46 be included in or excluded from the production cost of goods in general or of goods of any class or kind, and the movement of goods to and from any territory with the government of which an agreement has been concluded under section 49 or 51,];” and 15 20

- (d) by the addition after subsection (3) of the following subsection:

“(4) Where a matter is in terms of this Act to be prescribed by rule, the Commissioner must prescribe that matter by rule published in the *Government Gazette* unless the Commissioner by rule published in the *Gazette* indicates that that matter is to be prescribed by rule published on the SARS website.”. 25

Amendment of section 122 of Act 91 of 1964

87. The following section is hereby substituted for section 122 of the principal Act:

“Short title and commencement

122. (1) This Act shall be called the Custom and Excise Act, 1964, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*. 30

(2) As from the date the Customs and Excise Amendment Act, 2013, takes effect, this Act shall be renamed the Excise Duty Act, 1964.”.

Short title and commencement 35

88. This Act is called the Customs and Excise Amendment Act, 2013, and takes effect on the date on which the Customs Control Act takes effect in terms of section 944(1) of that Act.

**MEMORANDUM ON OBJECTS OF CUSTOMS AND EXCISE
AMENDMENT BILL, 2013**

1. BACKGROUND

- 1.1 Customs and excise legislation is currently contained in the Customs and Excise Act, 1964 (Act No. 91 of 1964), which basically provides for the levying of customs and excise duties, and also certain other taxes such as fuel levies, Road Accident Fund levies, environmental levies and air passenger tax. To enable the administration and collection of these taxes, the Act prescribes an extensive system of customs control focussed on the import, export, manufacture and use of goods. For purposes of convenience and common sense these control mechanisms also serve a secondary purpose, viz. to enforce legislative restrictions on the import and export of certain specific regulated goods, and especially to combat the smuggling of counterfeit and other illicit goods into and out of the Republic.
- 1.2 The Customs and Excise Act, 1964, was written to cater for the needs of the time when the focus was on control, and although the Act was extensively amended over the years to keep pace with new approaches and to soften and modernise the system, the basic structure of the Act remained unchanged and still contains a strong undercurrent of rigidity reminiscent of the era in which it was written. As such it is no longer structurally suitable to serve as a vehicle for implementing a modern system of customs control in accordance with current international trends and best practice. It was accordingly decided to undertake a fundamental restructuring of our customs and excise legislation not only to give effect to the Revised Kyoto Convention and other binding international instruments but also to establish a sound, clear and logical legislative framework that would enhance and “speak to” the many other legislative instruments that rely for their implementation on customs control.
- 1.3 When the redrafting of the new legislative framework commenced, the approach was to split the Customs and Excise Act, 1964, into three separate pieces of legislation to eventually replace the 1964 Act, viz—
 - (a) a Customs Control Act that will establish a system for the customs control of all goods imported into or exported from the Republic and for all means of transport and persons entering or leaving the Republic;
 - (b) a Customs Duty Act, that will provide for the imposition, assessment and collection of customs duties on goods imported into the Republic, and if needed in future also for duties on exported goods; and
 - (c) an Excise Duty Act, that will provide for the imposition, assessment and collection of excise duties, fuel levies, Road Accident Fund levies and environmental levies on goods imported into or manufactured in the Republic and also for the collection of air passenger tax.
- 1.4 The dissection of the Customs and Excise Act, 1964, and the rewrite of the current customs and excise legislation is a mammoth task that will and has already taken several years to complete. For that and other reasons it was from the outset decided to split the customs and the excise aspects of the task and to complete the project in two phases, the first phase being the drafting of the two Customs Bills and the second the drafting of the Excise Bill. The intention is to proceed, at this stage, only with the two Customs Bills and to retain the current Customs and Excise Act, 1964, in an amended form for the continued administration of excise duties and the relevant levies until the proposed new Excise Act comes into effect. The position would thus be that the two Customs Bills would replace the provisions of the current Customs and Excise Act, 1964, in relation to customs only and that the amended 1964 Act would for the time being continue to apply to excise duties and these other levies. The redrafting of the proposed new Excise Duty Act has not commenced as of yet.

2. OBJECTS OF BILL

The object of the Customs and Excise Amendment Bill (“the Bill”) is therefore to amend the provisions of the Customs and Excise Act, 1964, and to remove from the Act all the provisions that have now been incorporated into either the Customs Control Bill or the Customs Duty Bill. As the 1964 Act will no longer apply to the customs control of imported and exported goods and to the imposition of customs duties, it is proposed to rename the existing Act the Excise Duty Act.

3. SUMMARY OF BILL

- 3.1 As the aim of the Bill is simply to align the 1964 Act with the content of the proposed Customs Control and Customs Duty Bills, the amendments contained in the Bill are mostly of a technical and consequential nature. As such it does not establish new principles in relation to duties and levies on excisable goods, fuel levy goods, Road Accident Fund goods or environmental goods except where it is necessary for reasons of uniformity to align the provisions of the existing Act with changes proposed in the other Bills. For instance, the previous prescription period of two years for refunds is now proposed to be changed to three years for all refunds, whether customs or excise related.
- 3.2 As the proposed Customs Control Act will serve as a platform for all “tax levying Acts” which per definition will include the amended 1964 Act (or “Excise Duty Act” as it will be called in the new dispensation), the Customs Control Bill including all new principles provided for in that Bill will automatically apply to excisable, fuel levy, Road Accident Fund and environmental levy goods whenever those goods are dealt with in a manner that brings them within the scope of the Customs Control Bill. For instance, all the provisions of the Customs Control Act will automatically apply to excisable goods when imported or exported, but as the Customs Control Bill does not deal with manufactured goods, it will not apply to the manufacture or storage of goods in excise warehouses. Here the (*amended*) 1964 Act will continue to apply.
- 3.3 It is also to be noted that certain mechanisms of the Customs Control Bill will fully apply across both the customs and the excise environments irrespective of whether the goods are imported or locally manufactured goods. These mechanisms include delegations, measures to ensure confidentiality, enforcement by customs officers, state warehouses, provision of security, voluntary disclosure relief, internal appeals, and judicial proceedings for recovery of tax.
- 3.4 The classification of imported and locally manufactured goods for purposes of customs and excise duties and the imposition of duties and levies and rebates on such goods, are currently contained in the plethora of Schedules to the 1964 Act. It is proposed to split these Schedules into a “Customs Tariff” applicable to customs duties and an “Excise Tariff” applicable to excise duties and the other relevant levies. The proposed Customs Tariff will be introduced before the Customs Duty Act takes effect, whilst the existing Schedules in the 1964 Act as applicable to excise duties and the relevant levies will continue for the time being to serve as the Excise Tariff.
- 3.5 As it will be unwise to have two different statutory regimes for duties (customs and excise) on imported goods, it is proposed, pending the enactment of the new Excise Duty Act, to apply for the time being some of the provisions of the Customs Duty Act also for purposes of excise duties on imported goods. The Amendment Bill for this reason inserts section 43B in the 1964 Act which provides for the application of the Customs Duty Bill, with any necessary changes as the context may require, excluding Chapters 2, 8 and 9 of that Bill, to any matter regulating or affecting duties or levies on imported excisable, fuel levy, Road Accident Fund levy or environmental levy goods. The effect of this provision is that the Customs Duty Bill will, as a

temporary measure, determine for excise duty purposes matters such as dutiability, liability, assessment procedures, tariff classification, valuation, payment, collection, refunds, interest on arrears, etc. The equivalent provisions in the 1964 Act prescribing these matters in relation to imported goods are deleted.

- 3.6 The transitional provisions relating to the Customs Control Bill, the Customs Duty Bill and the Customs and Excise Amendment Bill are because of their interrelatedness presented in a consolidated form in Part 3 of Chapter 41 of the Customs Control Bill.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

No consultation has taken place in respect of this Bill specifically because the object of the Bill is, as stated above, only to align provisions of the Customs and Excise Act, 1964, with the content of the proposed Customs Control Bill and the proposed Customs Duty Bill, and to remove all the provisions that have been incorporated into either of the two proposed Bills. Extensive consultation has taken place in respect of these Bills.

5. FINANCIAL IMPLICATIONS

Implementation costs may arise from staff training which will be covered from funds in SARS' budget.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and SARS are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 76 of the Constitution applies.
- 6.2 The State Law Advisers are further of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

Printed by Creda Communications

ISBN 978-1-77597-089-7