

# CUSTOMS BROKERS

## CUSTOMS ACT

### 184. Authorised agents.

(1) The owner of any goods, other than goods of a personal private nature or not imported for commercial purposes, shall comply with this Act by or through a lawfully authorised agent.

(2) For the purposes of Subsection (1) a lawfully authorised agent shall be a Customs agent licensed in the prescribed manner.

(3) For the purposes of subsection (1) an authorized agent shall obtain from the owner of the goods a written authority authorizing that agent to act on behalf of the owner in respect of those goods. Such an authority may be for a particular shipment or shipments or for an ongoing period.

(4) The written authority shall be in a form approved by the Commissioner-General and shall be retained by the authorised agent for a period of 5 years from the transaction to which the written authority relates.

(5) An authorized agent who fails to comply with subsections (3) or (4) commits an offence against this Act,

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

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## CUSTOMS REGULATIONS

### PART XIV.—CUSTOMS AGENTS.

#### 76. Interpretation of Part XIV.

In this Part—

“**Customs Agent**” means an agent within the meaning of Part XVII of the Act and includes an agent within the meaning of Regulation 78;

“**Customs Broker**” has the same meaning as a customs agent

“**Licence**” means a licence to act as a Customs Agent.”

#### 77. Licences.

(1) The Commissioner General may, on application in an approved form, grant to a person a licence in an approved form.

(2) Where an application is made, the Commissioner General shall not grant a licence if, in his opinion:

(a) the applicant is not a fit and proper person; or

(b) the applicant is not qualified to be a customs agent;

(3) The Commissioner General shall, in determining whether a person is a fit and proper person for the purposes of subsection (2)(a), have regard to:

- (a) any conviction of the person for a offence involving dishonesty or any offence against the Customs Acts committed within the 10 years immediately preceding the making of the application;
- (b) whether the person is an undischarged bankrupt;
- (c) any misleading statement made in the application by or in relation to the person; and
- (d) where any statement by the person in the application was false—whether the person knew that the statement was false.

(4) For the purposes of subsection (2)(b), an applicant shall be taken to be qualified to be a customs agent if, and only if, he has completed a course of study or instruction and he has acquired experience that, in the opinion of the Commissioner General, fits him to be a customs agent.

(3) Where the Commissioner General refuses to grant a person a licence he shall state the reasons in writing and serve notice of the decision to the applicant.

(6) A person subject to a notice under this section may, within 30 days from the date of the notice, appeal in writing to the Customs Appeals Tribunal against the order stating the grounds of his appeal.

(7) The Tribunal shall consider the appeal in accordance with the requirements of Division XV of the Act.

(8) The fact that an appeal is pending does not in the meantime interfere with or affect the decision of the Commissioner General and it shall apply as if no appeal is pending.

(9) Nothing in this section affects the rights of a person subject to a notice under this section to bring proceedings in a Court of competent jurisdiction against the Commissioner General for a judicial review of the decision, but proceedings do not lie under this section unless the administrative appeal processes described in Division XV of the Act have first been exhausted.

## **78. Sub-agents and head agents.**

(1) Where a licence is granted to a person who is, at the time when the licence is granted to him-

- (a) an employee of a person, firm or company and is not an employee of any other person, firm or company: or
- (b) an employee of a licenced Customs Agent that person is, for the purposes of this part, a Customs Agent.

## **79. Suspension, cancellation of or imposition of restrictions on a licence.**

(1) The Commissioner General may, at any time, and from time to time, by notice, suspend, cancel or otherwise impose restrictions on a licence.

(2) The Commissioner General may give notice in accordance with this section to a customs agent if he has reasonable grounds to believe that:

(a) the customs agent has been convicted of an offence involving dishonesty;

(b) the customs agent, being a natural person, is an undischarged bankrupt;

(c) the customs agent, being a company, is in liquidation;

(d) the customs agent has ceased to perform the duties of a customs agent in a satisfactory and responsible manner;

(e) the customs agent is guilty of conduct that is an abuse of the rights and privileges arising from his licence;

(f) the customs agent has not, within 30 days after the day prescribed for the payment of any fees, paid those fees;

(g) the customs agent made a false or misleading statement in the application for the licence;

(h) the customs agent has not complied with a condition or restriction imposed on the licence; or

it otherwise appears to him to be necessary for the protection of the revenue or otherwise in the public interest to give the notice.

(3) Without limiting the generality of paragraph (1)(d), a customs agent shall be taken, for the purposes of that paragraph, to have ceased to perform the duties of a customs agent in a satisfactory and responsible manner if the documents prepared by the customs agent for the purposes of this Act contain errors that are unreasonable having regard to the nature or frequency of those errors.

(4) A notice under Subsection(1) shall specify the grounds on which the licence is suspended, cancelled or otherwise subject to imposed restrictions.

(5) A copy of the notice to the licensee pursuant to Subsection (1) shall be—

(a) delivered to the licensee; or

(b) left at his usual place of abode or business.

(6) A person commits an offence if he fails or refuses to comply with the terms of a restriction placed on the licence by the Commissioner General under this section.

Penalty: Subject to Sections 163, 164 and 165 of the Act, a fine of not less than K5,000.00 and not exceeding K25,000.00

(6) A person subject to an order under this section may, within 30 days from the date of the order, appeal in writing to the Customs Appeals Tribunal against the order stating the grounds of his appeal.

(7) The Tribunal shall consider the appeal in accordance with the requirements of Division XV of the Act.

(8) The fact that an appeal is pending does not in the meantime interfere with or affect the decision of the Commissioner General and it shall apply as if no appeal is pending.

(9) Nothing in this section affects the rights of a person subject to a notice under this section to bring proceedings in a Court of competent jurisdiction against the Commissioner General for a judicial review of the decision, but proceedings do not lie under this section unless the administrative appeal processes described in Division XV of the Act have first been exhausted.”

**80. Licence fee.**

- (1) A Customs Agent shall pay an annual licence fee of K1,000.00 in one sum each year, payable on or by the 10<sup>th</sup> working day of Customs that year.
- (2) Where an application for a new Customs Agent’s license is made during a year, the licence fee is payable in advance and may, at the discretion of the Commissioner, be charged at the pro-rata rate of K83.33 for each month or part thereof remaining for the balance of the year.”

**81. Security for licence.**

- (1) Before a licence is granted to any person, security for the amount prescribed under Subsection (2), to the satisfaction of the Commissioner General, shall be furnished by that person.
- (2) The amount of security to be furnished under Subsection (1) to the Commissioner General shall be K50,000.00.
- (3) The security to be furnished under this Regulation may, at the discretion of the Commissioner General, be given by way of-
  - (a) an unconditional bank guarantee; or
  - (b) a Customs security as prescribed in an approved form.
- (4) The terms and conditions of the security shall be determined by the Commissioner General of the Internal Revenue Commission.”

**82. Payment of duty by Customs agents [Repealed]**

**83. Unlawfully acting as agent.**

(1) A Customs agent, or any person in the employ or acting under the instructions of a Customs agent, must not act as the agent of the owner of any goods unless he is duly authorized by the owner.

Penalty: Subject to Sections 163, 164 and 165 of the Act, a fine not less than exceeding K5,000.00 and not exceeding K25,000.00.

**84. Pretending to be Customs agent.**

(1) Unless he is the holder of a licence, a person who assumes or uses in connection with his trade, business, calling or profession any words that would reasonably lead to the belief that it is being carried on under such a licence is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165 of the Act, a fine of not less than K5,000.00 and not exceeding K25,000.00

(2) Without limiting Subsection (1), a person who, not being the holder of a licence—

(a) places, or permits to be placed, on the building in which he carries on his trade, business, calling or profession; or

(b) uses in any advertisement or sign published or displayed in connection with his trade, business, calling or profession; or

(c) uses on any document, as a description of his trade, business, calling or profession; or

(d) uses as the name or part of the name of any firm or company registered in Papua New Guinea;

the words "Customs Agent" or "Customs Broker" or any words so nearly resembling them as to be likely to deceive, whether alone or in conjunction with other words, is guilty of an offence against that subsection.

(3) Unless he is the holder of a licence, a person shall not:

(a) do any act or thing in relation to the goods that is required or permitted to be done by the owner of the goods under the Customs Acts; or

(b) represent that he is able to do, or able to arrange to be done, any act or thing in relation to the goods that is required or permitted to be done by the owner under the Customs Acts;

and a person who contravenes this subsection is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165 of the Act, a fine of not less than K5,000.00 and not exceeding K25,000.00