



LRA GUIDELINES

CLEARING AGENTS : LICENSING AND ADMINISTRATION

Legal & Policy Division
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Key Definitions and Acronyms

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

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

for or on behalf of an importer or exporter, and is a holder of a valid license issued by Lesotho Revenue Authority, enabling them to perform any function under, or complying with any requirements of the Act.

“Exporter”

includes any person who, at the time of exportation:

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

“Importer”

includes any person who, at the time of importation:

- a. Owns or is the titleholder of any goods imported;
- b. Carries the risk of any goods imported;

- c. Represents that or acts as if he is the owner of any goods imported;
- d. Actually, imports any goods into Lesotho;
- e. Is beneficially interested in any goods imported;
- f. Acts on behalf of any person referred to in paragraph a., b., c., d., or, e.

“LRA”

Lesotho Revenue Authority as established in terms of the Lesotho Revenue Authority Act of 2001.

“Person”

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

1.0 Introduction

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

2.0 Objective

The objective of these Guidelines is to provide a clear regulatory framework that provides for the efficient and effective administration and licensing of Customs Clearing Agents, Accredited preferred trader self-declarants and Freight forwarders pertaining to their regulatory duties, the expectations by the LRA pursuant to published legal obligations and the clearance responsibilities.

3.0 Scope

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

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

4.0 The Law

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

5.0 Registration Requirements

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

5.0.1. Requirements

5.0.1.1. Submission Requirements

- a) Any person can apply for registration as a Customs Clearing Agent. To be considered, registered and licensed as a Clearing Agent, the following requirements must be fulfilled;
 - i. Be a citizen or a permanent resident of Lesotho in the event of a natural person;
 - ii. Be a resident of Lesotho for tax purposes;
 - iii. Be of mature age¹, in the event of a natural person;
 - iv. Have a registered business and physical office in Lesotho even if the company is foreign owned;
 - v. Have not, in the previous two years, been in violation, conviction or contravention of the provisions of the Customs and Excise act, Income Tax and Vat Act and any other relevant Laws;

¹ A person is considered to be of maturity age if a person is 18+ years old

- vi. Should be able to pay the required security bond,
- vii. Have a proof of good credit history, at least for a year prior to application

b) An applicant should submit the following application documentation;

- i. A completed application form, CE 185.10 (available online at www.lra.org.ls), with the following attachments as may be applicable to the type of business entity;
 - A certificate of incorporation from the Registrar of Companies,
 - Memorandum and Articles of Association,
 - Deed of Partnership,
 - A certified copy of Identity Document or Passport of the Owner, Directors, Partners etc. (page with picture and holders' details).
- ii. Company business profile;
- iii. Proof of citizenship or permanent residency in Lesotho;
- iv. Proof of physical address of the business;
- v. The most current bank statement from a local bank for the prior 3 months on the date of application,
- vi. Proof of good credit history as obtained from at least 2 credit references e.g. banks provided such person is already in business,
- vii. Qualification of clearing Officers and Management Team

5.0.1.2. Evaluation

Upon receipt of the above-mentioned documents, the Head of Core Operations will evaluate the following requirements regarding the application;

a) Management Team Competency

At least one of the management team must

- i. Have at least a diploma in business management plus 1 years' experience in Customs operations and must have passed competency test or
- ii. Have customs clearing experience of at least 5 years and must have passed a customs competency test; and
- iii. Must have attended an accredited customs training covering key customs subjects that the LRA will check and approve. Or must have attended Clearing Agent training programmes offered by the LRA. (Annex 1LRA Clearing Training Programme).

b) Individual and Educational Requirements for Clearing Clerks

The Customs clearing Clerk as defined above should satisfy the following criteria;

- i. Be of mature² age
- ii. Have at least L.G.C.S.E or equivalent as a minimum qualification and be computer literate (computer basic skills)
- iii. All officers must have had or must achieve a pass rate of 70% or above in the customs competency test and
- iv. Must have attended an accredited customs training covering key customs subjects that the LRA will check and approve. Or must have attended Clearing Agent training programmes offered by the LRA.

c) Competency Test

All candidates who have met application stage requirements shall undertake a competency test organized by the LRA.

The test shall be both oral and written, intended to assess the applicant's knowledge on Customs business and technical management, related but not limited to Tariff

² A person is considered to be of maturity age if a person is 18+ years old

Classifications, Rules of Origin, Customs Valuation Principles and Procedures. A minimum pass mark of 70% should be attained for one to be successful. An applicant is given three (3) chances of sitting for this test, three (3) months following the previous one, failure of which renders the person disqualified for a period of 2 years. The sittings for competency test are conducted quarterly throughout the year.

d) Vetting of the applicant

Subsequent to passing of the competency test, the applicant shall be subjected to vetting by the LRA to validate the compliance history as provided at application stage.

5.0.1.3. Post Evaluation

a) Physical Inspection of the Business Premises

Following successful testing of Management team member and the clearing Clerks, the physical address (business operating offices) as provided at the application stage shall be confirmed through a physical inspection and/or physical visit to the premises. The following are required;

- i. Business premises of the proposed Customs Clearing Agency should have minimum sufficient resources to ensure diligent discharge of its responsibilities and obligations as follows:
 - Computers with reliable internet access as per the requirements stipulated in Annex 1.
 - A facility to scan and attach supporting documents that may be required during the declaration process;
 - Clearance tools such as Harmonized System and HS reference materials (e.g. Explanatory notes), and others as may be required

b) Payment of Surety Bond

All successful applicants will be notified in writing for payment of a bond. The bond must be duly signed and guaranteed by local commercial bank or insurance company at a rate prescribed by the LRA based on business requirements and risk.

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

- i. general tax compliance status of the licensee and the track record in respect of due diligence in undertaking the clearance work of the clients; based on, error rate, timelines of response to queries and others as may be determined;
- ii. The number, value and nature of the goods processed by the Licensee for a period of at least 1 year.

c) Licensing-Authorization

This is the last stage of the application process for a clearing Agency where the LRA provides applicants with licenses for clearing. A license fee as prescribed in schedule 8 of the tariff book or as determined by the LRA Management.

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

A clearing Agent must complete an IT access Form for system rights with the following attachments;

- i. Letter of results of clearing clerk who has sat and passed the Customs competency test
- ii. Passport copy
- iii. Passport size photo.

5.0.1.4. Transitional Requirements

This section relates to the Customs Clearing Agents who are already registered and licensed by the LRA, who's clearing clerk(s) previously certified by the LRA may have left the employment. It also relates to employees, shareholders or directors who were issued with ASYCUDA clearance pass codes who have not undertaken the Customs competency test.

The currently approved Customs Clearing Agents will be allowed to notify the Head of Core Operations of the above mentioned categories of people who will be required sit for the competency test. These candidates will be given the opportunity to sit for the competency test on monthly³ intervals at an old pass mark of 50%. Should they not be successful during this period, clearing pass codes and where necessary, clearing agency license will be revoked. Such agent will be given a chance to start the Registration process as if it were a new applicant.

6.0 Obligations of the Clearing Agents

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

³ It highly depends on the number of candidates.

7.0 Liability of Clearing Agents

- a)** Liable for fulfillment of all obligations imposed upon the client under the Customs and Excise Act and other relevant laws, to the extent that such obligations are to be fulfilled by such client,
- b)** Liable for fulfillment of all obligations including: the payment of duties, taxes, penalties and charges, imposed on the client under the Customs & Excise Act and Revenue Acts;
- c)** Responsibility to ensure that the clearing officers are duly skilled in clearance procedures and all customs and import and export related matters.

8.0 Limitation of Liability by the Clearing Agents

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

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

9.0 Control Procedures for Licenses

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

- a)** No person shall operate as a Customs Clearing Agent unless licensed by the LRA to do so;
- b)** The LRA officers shall always observe and confirm that the Customs Clearing Agent's licenses are valid;

- c) The Importer/Exporter's Taxpayer Identity Number (TIN) is expected to be quoted on all communication between the Customs Clearing Agent and the LRA;
- d) Should the Customs Clearing Licensee's details change, the licensee must advise the LRA, within seven days (7) prior to such occurrence/changes becoming effective, using form CE185 obtainable from the Legal and Policy Licensing Office or on line.
- e) The LRA shall carry out inspections from time to time to monitor whether the licensing and registration requirements are still being complied with. This may result in withdrawal or cancellation of the if the license has been used in any manner that contradicts the Customs and Excise Act and Customs Regulations of 1984 and other relevant laws. Licensing officers.

10.0 Monitoring and Evaluation

LRA shall measure from time to time performance of Clearing Agents for compliance, efficiency and effectiveness. The quality of work performed by Clearing Agents is very important as it affects the decisions made by traders and release times by Customs. Therefore, the performance standards are key in improving performance of Clearing Agents as set out in Annex 2. The performance standards shall be used to measure performance of each clearing Agency licensed. The Authority shall reward good performance and shall sanction poor performance in line with KPIs. From time to time, each Clearing Agency shall sign performance Agreement with Lesotho Revenue Authority.

11.0 Punitive Measures

The LRA has the right to impose penalties on any person who contravenes any provisions of the Act and other relevant laws. The penalties shall be imposed on both administrative and technical errors as per the annex 4 on Administrative Penalties appended to this guidelines.

Administrative Penalties may be imposed on the following violations (which are not exhaustive):

- a) Attaching incorrect documents, this includes attaching documents in an unacceptable format.
- b) Using incorrect procedure codes and regimes
- c) Using the wrong methods of payment
- d) Using wrong commodity codes
- e) Duplication of declarations
- f) Not attending queries
- g) Using wrong importer TINs
- h) Declaring wrong country of origin and country of export
- i) Using incorrect office codes
- j) Inserting incorrect Weights
- k) Declaring wrong values as compared to attached invoices
- l) Giving ASYCUDA passwords to unregistered users (Unlawful use of ASYCUDA pass codes)
- m) Leaving trucks at the border premises without permission
- n) Leaving the border without completing all border formalities and processes
- o) Multiple use of a single Electronic Funds Transfer (EFT) (as proof of payment) for payment of different consignments
- p) Coming to the border without the proceed to border (PTB) document and parking in the border area without authorization

12.0 Renewal, Refusal and Cancellation/Revocation of Licenses

The LRA has the right to reasonably refuse application for issuance or renewal of a license and to cancel a license with written reasons for such. The ASYCUDA pass codes provided thereof, shall be canceled accordingly.

12.1 The Clearing Agent is obliged to renew a license on an annual basis. The renewal of the license shall be subject to assessment of the applicant performance history and compliance to terms and conditions of the licenses

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

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

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

13.0 Withdrawal of License

The Customs Clearing License holder can voluntarily withdraw a license for reasons to be provided in writing to the Head of Core Operation; for the following reasons where applicable;

a) Voluntary Business Closure

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

b) Economic Force Circumstances:

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

c) Forced Business Closure:

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

14.0 Conclusion

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

ANNEX 1: NETWORK AND COMPUTER SYSTEM MINIMUM REQUIREMENTS

ASYCUDAWorld: Minimum Computer & Network Requirements

To access this system, your computer must meet the following minimum specifications

Hardware	Software	Connectivity
<p>PC/Laptop: <i>RAM: 2GB</i> <i>Hard Disk Space: 500GB</i> <i>Processor Speed: 2.5 GHz</i></p>	<p>Is available for download on the ASYCUDA Website</p>	<p>Approximate bandwidth requirement</p> <ul style="list-style-type: none"> - 512 Kbps (256 kbps up/ 256 kbps down) for individuals - 1 Mbps (512 Kbps up/ 512 Kbps down) ≤ 8 users - 2 Mbps (1 Mbps up / 1 Mbps down) ≤ 15 users - 4 Mbps (2 Mbps up / 2 Mbps down) ≤ 25 users - 8 Mbps (4 Mbps up / 4 Mbps down) ≤ 50 users
<p>Scanner: High quality resolution</p>	<p>Acrobat /PDF reader</p>	<p>Stable internet connectivity</p>
<p>Printer: LaserJet, A4 paper</p>	<p>Java (jre) 1.6.x.x</p>	<p>Any web browser but Mozilla Firefox is more preferred</p>

ANNEX 2: CLEARING AGENTS KEY PERFORMANCE INDICATORS

1. **KEY Performance Indicators and standards for Clearing Agents Background**

Lesotho Revenue Authority licenses Clearing Agents under sections 66(1) of Customs and Excise act 1982 to act on behalf of importer and exporter of goods. The Clearing Agents are therefore playing very important role in clearance of goods and Facilitation trade as intermediary between customs and traders since they are knowledgeable and experienced in customs processes and procedures. Therefore, Clearing Agents are expected comply with Customs regulations and other regulatory requirements to ensure that appropriate duties and taxes are collected.

The engagement of Clearing Agents is optional as traders are free to use Clearing Agents or self-declare goods .This is in line with Revised Kyoto convention (RKC) as it provides that persons concerned importation and exportation shall have the choice of transacting business with Customs either directly or by designating a “third party” to act on their behalf.

2. **Need for Key performance indicators and standards for Clearing Agents**

LRA adopted strategic initiative to Increase client satisfaction rating of excellence from 10 percent to 60 percent by June 2020 and therefore performance management and measurement is important since Clearing agents are acting Traders to customs .

Sometimes traders experience some significant delay due to high rate of errors made by Clearing Agents when submitting electronic declaration to customs and delay in responding the queries issued by customs. The standards are going to be used in measuring permanence of clearing Agents and it is believed this will improve performance of Clearing and quality of services they give to Traders.

The KPIs for performance measurement were developed in consultation with Clearing Agents as the main stakeholder, as per Table 1 below,

KEY performance indicator	Standard	Frequency
% Voucher of corrections (declarations amended or cancelled) per quarter	5 % or less	Monthly
Average time taken to resolve query	Within 24 hours	Monthly
Average time taken to process declaration	2 hours after payment	Monthly
Number of offences committed	Should not exceed 2 offences	Monthly
Number of monthly meetings attended	At least 3	Quarterly
% declarations over 30 days pending release from the system	Zero	Monthly
Average time taken to respond to a query	3 hours	Monthly
Allowable period for declarations pending Clearance	Within 7 days	Monthly
Number of days declarations pending payment	Should not exceed 10 days	Monthly