

## DRAFT CUSTOMS CONTROL RULES – FOURTH BATCH

### NOTE TO STAKEHOLDERS

Please note that the various Chapters of the Control Act deal comprehensively with the topics dealt with in the corresponding Chapters of the rules.

The function of the rules contained in a particular Chapter is simply to facilitate implementation of the relevant Chapter of the Act where, for instance, a provision of that Chapter requires details to be prescribed by rule.

As a subsidiary instrument, the rules cannot and should not be read in isolation of the relevant Chapter of the Act. Each rule must be read together with the empowering or other applicable provision indicated for the particular rule.

Due date for comments: 30 January 2015

Comments to be submitted to Ms S Authar at [sauthar@sars.gov.za](mailto:sauthar@sars.gov.za)

## CHAPTER 32

### RECOVERY OF DEBT UNDER CONTROL ACT<sup>1</sup>

#### Definitions

**32.1** In this Chapter –

“**credit push**” means a payment transaction initiated through eFiling, presented as a payment request to the bank of the person making payment, for which an authorisation by that person is required;

“**instalment payment agreement**” means an agreement entered into by a person liable for a debt referred to in section 695 of the Control Act and the Commissioner for payment of the debt in instalments as envisaged in section 702 of the Act;

“**payment advice notice**” means a notice generated by the customs authority upon request by a person liable for a debt, in respect of a payment to be made by that person, which reflects –

- (a) the name of the person making payment;
- (b) the relevant payment reference number;
- (c) the transaction or transactions being settled, and
- (d) the amount to be paid;

“**payment reference number**” means a unique 19-digit number allocated by the customs authority to identify a payment and ensure the correct allocation of the payment –

- (a) in a notice demanding payment of an amount owed to the Commissioner, or
- (b) in an instalment payment agreement referred to in rule **32.11** as processed by the customs authority;

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<sup>1</sup> Note that this Chapter applies only to the recovery of debt that becomes payable to the Commissioner under the Control Act. The recovery of tax and other debt, including the payment of refunds, under the Customs Duty Act and the Excise Duty Act is regulated by those Acts.

“**SWIFT message**” means a secure and standardised payment message sent electronically by one financial institution to another through the Society for Worldwide Inter-bank Financial Telecommunication (SWIFT) network.

***Part 1: Methods of payment and conditions for such payment***

**Methods that may be used to pay debt to the Commissioner** (*section 706(a)*)

**32.1** (1) The following payment methods may be used to pay a debt to the Commissioner, subject to subrule (2):

- (a) Cash payment;
- (c) cheque payment;
- (d) payment by electronic funds transfer, including payment effected by using SWIFT message in the case of international payments;
- (e) credit push payment initiated through eFiling; and
- (f) debit or credit card payment.

(2) If a person making payment in terms of this Chapter is registered for eFiling, the payment method referred to in subrule (1)(e) must be used.

**Conditions and requirements for cash payments** (*section 706(a)(i)*)

**32.2** (1) Cash payments may be made at any Customs Office during the office hours determined for that Customs Office in terms of section 14(1)(c)(i) of the Control Act.

(2) (a) The maximum amount of cash that may be paid per transaction at a Customs Office is limited to –

- (i) R 2000,00 in bank notes;
- (ii) R 50,00 in R5 coins;
- (iii) R 20,00 in R2 coins;
- (iv) R 20,00 in R1 coins;
- (v) R 5,00 each in 10c to 50c coins; and
- (vi) 50c in 5c coins.

(b) Paragraph (a) does not apply to payments at a place of entry or exit made by travellers and crew members entering or leaving the Republic.

(3) All cash payments are rounded off to the nearest 5 cents, to the benefit of the person making payment.

(4) A cash payment must be accompanied by a payment advice notice that is not older than seven calendar days.

**Conditions and requirements for payment by cheque** (*section 706(a)(i)*)

**32.3** (1) The following conditions apply to payments made by cheque:

- (a) A cheque must be signed and made out to “South African Revenue Service” in any of the official languages of the Republic and the payment must be reflected in Rand;
- (b) no cheque payment may be made by a person in respect of whom two cheques made out to the South African Revenue Service had been “referred to drawer” in the three years preceding the date of payment;
- (c) a cheque exceeding an amount of R10 000 must be bank guaranteed;
- (d) the total amount for payment made by cheque by the same person per day is R50 000, irrespective of the number of cheque payments required to be made on that day;
- (e) no post-dated cheques will be accepted; and
- (f) a cheque payment must be supported by a payment advice notice that is not older than seven calendar days.

**Conditions and requirements for payments by electronic funds transfer** (*section 706(a)(ii)*)

**32.4** The following conditions apply in respect of payments made by electronic funds transfer through internet banking facilities:

- (a) Electronic funds transfers may be done only through internet banking facilities of banks where SARS is listed on the bank’s preconfigured beneficiary ID listing, by selecting the applicable SARS beneficiary identification code;
- (b) in the case of electronic fund transfers effected by using SWIFT message –

- (i) payments may be done only through the internet banking facilities of a bank which supports payment effected by using SWIFT message; and
  - (ii) the SARS beneficiary identification code for foreign payments must be indicated; and
- (c) a payment by electronic funds transfer must be supported by a payment advice notice which must be submitted to SARS.

**Requirements for credit push payment initiated by eFiling** (*section 706(a)(iii)*)

**32.5** A person who wishes to make use of the credit push payment method must –

- (a) be registered for eFiling; and
- (b) make use of a bank that supports this payment method.

**Conditions and requirements for debit or credit card payments** (*section 706(a)(iii)*)

**32.6** The following conditions apply in respect of debit or credit card payments:

- (a) Payments by debit or credit card may be made by a traveller or a crew member when entering or leaving the Republic at the place of entry or exit or, in the case of rail travellers and crew, at the rail travellers terminal –
  - (i) where that traveller or crew member is processed through the Passenger Processing System; or
  - (ii) in the case of a trusted or frequent traveller, where that traveller is processed at a self-service facility for trusted or frequent travellers;
- (b) payment must be in Rand;
- (c) the traveller or crew member or other person tendering the card must be the account holder; and
- (d) only approved debit or credit cards as indicated on notice boards at the relevant traveller terminal or Customs Office may be accepted.

***Part 2: Payment of debt in instalments (section 702(b) and (d))***

**Conditions for payment of debt in instalments**

**32.7** Debt referred to in section 702 of the Control Act may be paid in instalments only if the customs authority has in terms of this Part entered into an instalment payment agreement referred to in rule **32.12** with the person liable for the debt.

**Applications for instalment payment agreements**

**32.8** (1) (a) A person who is liable for debt referred to in section 702 of the Control Act and who cannot pay the debt in a single payment may apply to the Commissioner electronically through eFiling, subject to paragraph (b), for permission to pay that debt in instalments.

(b) If an application is submitted to the Commissioner in paper format in circumstances where submissions in paper format are permissible,<sup>2</sup> the submission –

- (i) must be on Form..... published as a rule on the SARS website for the relevant purpose; and
- (ii) may be submitted to any Customs Office.

(3) An application must reflect –

(a) the following information in relation to the applicant:

- (i) The applicant's customs code, or if the applicant does not have a customs code, the applicant's name, physical address and contact details;
- (ii) if the applicant is a natural person, identity or passport number; and
- (iii) if the applicant is a juristic entity, the name of the person authorised to act on behalf of the entity, as well as that person's physical address, contact details, identity or passport number and capacity;

(b) the reference number of any document that demanded payment of the debt;

(c) the kind and amount of the debt owed to the Commissioner;

(d) the reason why the applicant cannot pay the debt in a single payment;

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<sup>2</sup> See section 913(4) of the Control Act.

- (e) whether the applicant anticipates income or other receipts which can be used to satisfy the debt, including a list of such anticipated incomes or receipts indicating the date when the income or receipt is expected;
  - (f) details of –
    - (i) the applicant's assets, investments and policies, including a description of the asset, the type of investment or policy, the name of the institution and the relevant values and, if applicable, maturity dates;
    - (ii) the applicant's debtors and creditors including names and contact details and amounts owed or owing; and
    - (iii) contracts or tenders awarded to the applicant, if any, including the name of the institution or contracting party, the contract or tender number, the contract or tender value and the commencement and completion dates;
  - (h) the proposed repayment period, which may not exceed a period of twelve months;<sup>3</sup> and
  - (i) the name and contact details of the applicant's auditor or financial adviser.
- (3) An application referred to in subrule (1) must be supported by –
- (a) the applicant's bank statements for a period of six months preceding the application, certified by the bank;
  - (b) evidence of the applicant's financial resources and liabilities, which may consist of –
    - (i) a copy of the applicant's audited financial statements for the financial year preceding the date of application; or
    - (ii) in the absence of such financial statements, an auditor's certificate to this effect;
  - (c) documentary evidence of the applicant's –
    - (i) assets, investments and policies, including a description of the asset, the type of investment or policy, the name of the institution and the relevant values and, if applicable, maturity dates;
    - (ii) debtors and creditors including names, contact details and amounts owed or owing; and

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<sup>3</sup> This period is subject to extension in terms of section 908 of the Control Act.

- (iii) contracts or tenders awarded to the applicant, if any, including the name of the institution or contracting party, the contract or tender number, the contract or tender value and the commencement and completion dates;
- (d) in the case of the applicant being a juristic entity, a certified copy of the document authorising the person who submitted the application on behalf of the entity, to act on behalf of the entity; and
- (e) a certified copy of the identity document or passport of any authorised person referred to in paragraph (d).

(4) (a) Supporting documents referred to in subrule (3) must be submitted to the Commissioner together with the application referred to in subrule (1).

### **Consideration of applications and notification of decisions**

**32.9** An application for permission to pay that debt in instalments referred to in rule **32.8** may be approved or refused, and the applicant is entitled to be notified of the decision.

### **Qualification criteria for payment of debt in instalments**

**32.10** The qualification criteria for the payment of debt in instalments are as follows:

- (a) The applicant suffers from a deficiency in assets, funds or liquidity and it is reasonably certain that that deficiency will be rectified in the near future;
- (b) the applicant anticipates income or other receipts that will be available for satisfying the debt;
- (c) the prospect of immediate recovery of the debt is poor or uneconomical but is likely to improve in future;
- (d) activity to recover the debt would be harsh in the particular case and the instalment payment agreement is unlikely to prejudice tax collection; and
- (e) the applicant provides security as may be required by the Commissioner.



## **Instalment payment agreements**

**32.11** (1) After being notified of the approval of an application in terms of rule **32.9** the applicant must complete the instalment payment agreement as published as a rule on the SARS website for that purpose.

(2) An instalment payment agreement must contain at least the following details:

- (a) The customs code of the debtor, or if the debtor does not have a customs code, the debtor's name, physical address and contact details;
- (b) in the case of the debtor being a juristic entity, the name of the person authorised to act on behalf of that entity, as well as that person's physical address, contact details, identity number or passport number and capacity;
- (c) the type of debt;
- (d) the amount of the debt;
- (e) the interest rate applicable;
- (f) the instalment amount;
- (g) the repayment period; and
- (h) conditions for –
  - (i) the repayment in instalments as may be determined by the Commissioner in the specific case to secure the collection of the debt; and
  - (ii) the amendment and termination of the agreement.

(3) An instalment payment agreement must –

- (a) be signed by the parties to the agreement; and
- (b) be submitted manually together with the supporting documents referred to in subrule (3), to any Customs Office.

(4) An instalment payment agreement must be supported by –

- (a) in the case of a natural person, a certified copy of that person's identity document or passport;

- (b) in the case of a juristic entity, a certified copy of the document authorising the person who signed the agreement on behalf of the entity, to act on behalf of the entity; and
- (c) a certified copy of the identity document or passport of any authorised person referred to in paragraph (b).

(5) When an instalment payment is made to the Commissioner, the payment must be supported by a payment advice notice which must be submitted to SARS.

***Part 3: Refunds of administrative penalties, interest on penalties, and other payments made to Commissioner in terms of Control Act (section 706(c))<sup>4</sup>***

**Circumstances in which refunds may be claimed**

**32.12** (1) A refund of any administrative penalty, interest or other payment made to the Commissioner in terms of the Control Act may be claimed only if –

- (a) the penalty, interest or other payment was paid in error—
  - (i) on or in respect of goods or in circumstances in respect of which it was not payable;
  - (ii) by a person not liable for that penalty, interest or payment;
  - (iii) due to a clerical, typographical, electronic or other administrative fault or an incorrect assumption on which the calculation of the penalty, interest or other payment was based;
- (b) any action taken in terms of Chapter 37 of the Control Act against the penalty, interest or other payment or the amount of the penalty, interest or other payment is successful; or
- (c) a final judgement of a court creates an entitlement to a refund of a penalty, interest or other payment or a part of the amount of the penalty, interest or other payment.

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<sup>4</sup> Note that this Part deals only with refunds of payments made to the Commissioner in terms of the Control Act. Refunds of payments made in terms of a tax levying Act, are dealt with in the relevant tax levying Act.

(2) A person who has paid an administrative penalty or interest or has made any other payment to the Commissioner in terms of Chapter 32 of the Control Act in circumstances to which subrule (1) applies, may apply in terms of rule **32.13** to the customs authority for a refund of that penalty, interest or other payment.

### **Application for refund of administrative penalties, interest and other payments**

**32.13** (1) (a) A person may apply for a refund of an administrative penalty, interest or other payment made to the Commissioner by submitting an application within the timeframe referred to in rule **32.14** to the customs authority electronically through eFiling, subject to paragraph (b).

(b) If an application is submitted to the customs authority in paper format in circumstances where submissions in paper format are permissible,<sup>5</sup> the submission –

- (i) must be on Form..... published as a rule on the SARS website for the relevant purpose; and
- (ii) may be submitted to any Customs Office.

(2) An application referred to in subrule (1) must reflect –

(a) the following information in relation to the applicant:

- (i) The applicant's customs code, or if the applicant does not have a customs code, the applicant's name, physical address and contact details;
- (ii) if the applicant is a natural person, the applicant's identity number or passport number;
- (iii) if the applicant is a juristic entity, the name of the person authorised to act on behalf of the entity, as well as that person's physical address, contact details, identity or passport number and capacity;

(b) the type of debt in respect of which the refund is applied for;

(c) the reference number of any document that demanded payment of the debt;

(d) the amount of the debt paid and the date of payment;

(e) the circumstance referred to in rule **32.12**(1) which justifies the application for a refund;

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<sup>5</sup> See section 913(4) of the Control Act.

- (f) in the case of the applicant relying on a circumstance referred to in rule **32.12(1)(b)** or (c), the date of the decision in any Chapter 37 proceedings or of the final judgement of a court;
  - (g) whether the applicant has any outstanding debt with the Commissioner; and
  - (h) in the case of an applicant who does not have a customs code, full details of the applicant's bank account.
- (3) An application referred to in subrule (1) must be supported by –
- (a) in the case of an applicant who does not have a customs code –
    - (i) a document confirming the applicant's banking details, including the name of the bank, the account holder's name, the account type and number, and the branch code, which may be –
      - (aa) a bank certified original bank statement or a legible bank certified copy of an original bank statement;
      - (bb) a bank certified original auto bank statement; or
    - (ii) an original letter from the applicant's bank on an official bank letterhead;
  - (b) in the case of the applicant being a juristic entity –
    - (i) a certified copy of the document authorising the person who submitted the application on behalf of the entity, to act on behalf of the entity; and
    - (ii) a certified copy of the identity document or passport of any authorised person referred to in subparagraph (i); and
  - (c) documentary evidence of the circumstance referred to in rule **32.12(1)** which the applicant relies on for justification of the application, which may include –
    - (i) proof of payment reflecting an amount erroneously paid referred to in rule **32.12(1)(a)** and any documents evidencing the error;
    - (iii) a notification by the customs authority of the outcome of any action taken in terms of Chapter 37 of the Control Act referred to in rule **32.12(1)(b)**; or
    - (iv) the final judgement of a court referred to in rule **32.12(1)(c)**.

#### **Time within which applications for refunds must be submitted**

**32.14 (1)** An application for a refund in terms of this Part must be submitted to the customs authority within a period of three years from the date on which the

amount reclaimed in terms of the application was paid, or if the amount was paid in instalments, from the date the first instalment was paid.

(2) Subrule (1) does not apply if the entitlement to, or the extent of, a refund is determined or otherwise affected by—

- (a) a decision in any administrative appeal or dispute resolution proceedings or a dispute settlement, and in such a case an application for the refund must be submitted to the customs authority within 180 calendar days from the date the decision was given or the matter was settled, as the case may be; or
- (b) a final judgement of a court, and in such a case an application for the refund must be submitted to the customs authority within 180 calendar days from the date the final judgement was given.

(3) If the grounds for a decision given in any appeal or dispute resolution proceedings referred to in subrule (2)(a) or in a final judgement referred to in subrule (2)(b) will, when applied to administrative penalties, or to interest on administrative penalties, or to other payments made to the Commissioner in terms of Chapter 32 of the Control Act that were not the subject of those proceedings or judgement, also affect those other penalties, interest or payments, applications for refund may in terms of subrule (2)(a) or (b) be submitted only in relation to those payments that were made after a date<sup>6</sup> three years prior to the date of payment of the penalty, interest or other payment that was the subject of those proceedings or judgement.

### **Consideration of applications**

**32.15** (1) In order for the merits of an application for a refund to be considered, the application must be a valid application.

(2) An application is valid if –

- (a) the applicant is in terms of rule **32.12** competent to submit the application;
- (b) the application complies with rule **32.13**;
- (c) the application was submitted within the applicable timeframe referred to in rule **32.14**(1) and (2); and

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<sup>6</sup> This covers all payments during the period from this date up to the date of the decision or final judgement and also payments made after the date of the decision or judgement which are not consistent with the decision or judgement.

(d) the application qualifies in terms of rule **32.14(3)**, if that rule applies.

(3) (a) If the customs authority invalidates an application in terms of subsection (2) it must notify the applicant of the invalidation, the date of invalidation and the reason for the invalidation.

(b) If the customs authority validates an application in terms of subsection (2), it must notify the applicant of the validation and the validation date.

(4) The customs authority must consider a validated application on the merits and, within 21 working days of validation of the application, either—

- (a) approve the application and pay the refund to the applicant;
- (b) refuse the application; or
- (c) reject the application on technical grounds.

#### **Interest payable on refunds** (*section 706(c)*)

**32.16** (1) If a person becomes entitled in terms of this Part to claim a refund of administrative penalties, including interest on such penalties, and of other payments paid to the Commissioner, no interest is payable on the amount of that penalty or interest, or of that other payment except as provided for in subsection (2).

(2) If the customs authority fails to pay a refund approved in terms of rule **32.15(4)** within the 21 working days' period referred to in that rule, the applicant is entitled to interest, at a rate determined by the Minister, on the amount of the refund or drawback, for a period commencing on the expiry of that 21 days' period up to the date of payment of the refund or drawback.

(3) Interest determined in terms of subsection (2) must be calculated on daily balances owing and compounded at the end of each month.

#### **Recovery of refunds paid in certain circumstances**

**32.17** (1) A person to whom a refund was paid in terms of this Part is obliged to repay the amount of the refund to the Commissioner if payment of the refund was made in error.

(2) A repayment referred to in subrule (1) must be made as the customs authority may direct in the demand for repayment.

### **Set-off of refund against amount owing**

**32.18** (1) When a refund becomes payable in terms of this Part to a person who has failed to pay an amount of tax, duty, levy, charge, interest or administrative penalty levied or imposed under the Control Act or any other legislation administered by the Commissioner within the period required for payment of the amount, the customs authority may set off the amount of such refund against the amount which that person has failed to pay.<sup>7</sup>

(2) Subsection (1) may not be applied to an amount of outstanding tax, duty, levy, charge, interest or administrative penalty if the customs authority has in terms of section 830 of the Control Act suspended or deferred payment of that amount pending institution or conclusion of proceedings in terms of Chapter 37.

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<sup>7</sup> Please note that if payment of an amount of tax, duty, levy, charge, interest or administrative penalty has been deferred to a future date, that amount only becomes payable at that future date. Consequently there cannot be a “failure” to pay the amount before that date. It also follows that if a refund is paid before that date, the refund cannot be set off against the deferred amount before that date.

## CHAPTER 33 GENERAL ENFORCEMENT FUNCTIONS

### Definitions

**33.1** In this Chapter –

“**non-lethal weapon**” means a defensive baton, oleoresin capsicum (OC) spray or a tazer;

“**official instructions**” means any instructions issued by –

- (a) the Commissioner; or
- (b) a customs officer in a supervisory capacity acting within his or her delegated mandate;

“**protective and defensive equipment**” means shields, protective vests, helmets, handcuffs, cuff strips, holsters, leg holsters, tactical belts, tactical gloves, knee pads or elbow pads.

### ***Part 1: Use of scanning equipment and other mechanical, electrical, imaging or electronic appliances for inspection of goods (section 751(1)(a))***

#### **Conditions for use of scanning equipment and other appliances**

**33.2** Scanning equipment and other mechanical, electrical, imaging or electronic appliances that may in terms of section 722(3)(b)(ii) of the Control Act be used for examining goods –

- (a) may be operated only by customs officers accredited to do so; and
- (b) must, if used on a person, be of a non-intrusive nature.

#### **Avoiding or interfering with scanning equipment and other appliances**

**33.3** (1) If any scanning equipment or other mechanical, electrical, imaging or electronic appliance referred to in section 722(3)(b)(ii) of the Control Act is installed or being operated by customs officers at the entrance to any restricted area which is or forms part of a customs controlled area no person may without permission of the customs authority enter that area otherwise than through that entrance.



(2) If any scanning equipment or other mechanical, electrical, imaging or electronic appliance referred to in section 722(3)(b)(ii) is installed or being operated by customs officers in a customs controlled area for purposes of examining goods, including goods on a person or in a package or container, no person may –

- (a) interfere or cause an interference with the equipment or appliance in order to deceive; or
- (b) do anything to prevent the equipment or appliance from producing –
  - (i) a true image of the goods or of the contents of the package or container; or
  - (ii) a true result of the purpose for which it is used.

### **Cargo scanning equipment**

**33.4** (1) Cargo scanning equipment may be used at –

- (a) the Durban customs seaport;
- (b) the Cape Town customs seaport; and
- (c) the land border-post at Beit Bridge.

(2) All containers imported or to be exported through the places of entry or exit referred to in subrule (1) selected by the customs authority must be presented for scanning.

(3) Cargo scanning equipment must at all times be operated by at least two customs officers.

## ***Part 2: Carrying, custody and use of firearms and ammunition by customs officers (section 751(1)(b))***

### **Issue of firearms to customs officers (section 741(2))**

**33.5** A customs officer in the category of customs officers that may carry firearms as contemplated in section 741(1) of the Control Act must comply with the following pre-qualifications before a firearm may be issued to the officer:

- (a) The officer must be in possession of a valid competency certificate issued in terms of the Firearms Control Act, 2000 (Act No. 60 of 2000);

- (b) the officer must successfully have undergone psychometric evaluation;
- (c) the officer must comply with the requirements of section 9(1) of the Firearms Control Act, 2000; and
- (d) the officer must give a written undertaking to control and use the firearm strictly in accordance with Part 6 of Chapter 33 of the Control Act, these Rules, the Firearms Control Act, 2000, and any official instructions.

### **Conditions subject to which firearms are issued**

**33.6** A firearm is issued to a customs officer subject to the following conditions:

- (a) During the officer's official working hours, the firearm –
  - (i) must be carried by the officer on his or her person in accordance with official instructions or protocol; and
  - (ii) may be left in the custody of another person only if permission has been granted by the officer's supervisor.
- (b) When off-duty the officer may retain possession of the firearm and any ammunition issued to the officer only if –
  - (i) permission has been granted by the officer's supervisor; and
  - (ii) the firearm and ammunition is secured in a gun safe at the officer's place of residence approved in terms of the Firearms Control Act, 2000.
- (c) The officer must attend at least four practical training sessions at a shooting range which complies with the applicable compulsory specification set in terms of the Standards Act, 1993 (Act No. 29 of 1993), and which is accredited in terms of the Firearms Control Act, 2000.
- (d) A training session referred to in paragraph (a) must include the actual firing of a firearm of the type issued to the officer.
- (e) The firearm or ammunition issued to the officer may not be used for hunting, recreational or other private purposes.
- (f) The Commissioner may at any time –
  - (i) request the officer to return the firearm; or
  - (ii) instruct another customs officer to remove the firearm from the officer's possession.

## **Shooting incidents**

**33.7** (1) Whenever a firearm issued to a customs officer is discharged, the officer must immediately submit a report on the incident to his or her supervisor.

- (2) A shooting incident report referred to in subrule (1) must –
- (a) be submitted on Form ....as published as a rule on the SARS website; and
  - (b) state –
    - (i) the circumstances in which, and the reasons why, the firearm was discharged;
    - (ii) whether any person was injured in the incident and, if so –
      - (aa) the name and address and other personal details of the injured person that are available to the officer; and
      - (bb) the nature of the injury and whether it was fatal or not;
    - (iii) whether any goods were damaged in the incident and, if so –
      - (aa) the name and address and other personal details of the owner or person in whose possession the goods were, that are available to the officer; and
      - (bb) the nature and extent of the damage;
    - (iv) whether the incident was reported to the South African Police Service, and if so, the Crime Administration System (CAS) number issued by South African Police Service; and
    - (v) any other information required on the form.

(3) This rule does not apply if the firearm is discharged for purposes of official target practice.

## **Use of ammunition**

**33.8** (1) A customs officer to whom a firearm has been issued must within five days after the end of each calendar month report to his or her supervisor the amount of any ammunition rounds used during that month.

- (2) An ammunitions report referred to in subrule (1) must –
- (a) be submitted on Form ....as published as a rule on the SARS website; and

- (b) state –
  - (i) the number of rounds used;
  - (ii) the calibre;
  - (iii) the purpose for which those rounds were used; and
  - (iv) any other information required on the form.

### **Theft , loss or damage to firearms or ammunition**

**33.9** (1) A customs officer to whom a firearm has been issued must immediately report to his or her supervisor any theft or loss of, or damage to, the firearm or any ammunition issued for official use.

- (2) A theft, loss or damage report referred to in subrule (1) must –
  - (a) be submitted on Form ....as published as a rule on the SARS website; and
  - (b) state –
    - (i) the circumstances in which the firearm was stolen, lost or damaged and, if damaged, the nature of the damage;
    - (ii) whether the incident was reported to the South African Police Service, and if so, the Crime Administration System (CAS) number issued by South African Police Service; and
    - (iii) any other information required on the form.

### **Non-compliance or negligence ground for disciplinary, dismissal or criminal proceedings**

**33.10** A customs officer to whom a firearm has been issued is subject to disciplinary or dismissal proceedings and, when appropriate, criminal proceedings, if the officer –

- (a) contravenes or fails to comply with a provision of –
  - (i) Part 6 of Chapter 33 of the Control Act;
  - (ii) a rule contained in this Part; or
  - (iii) the Firearms Control Act, 2000; or
- (b) acts negligently in the use of the firearm or in his or her possession of the firearm or ammunition issued for official use.

**Part 3: Custody and use of non-lethal weapons and protective and defensive equipment by customs officers (section 751(1)(b))**

**Issue of non-lethal weapons to customs officers**

**33.11** A customs officer must comply with the following pre-qualifications before a non-lethal weapon may be issued to the officer:

- (a) The officer must successfully have undergone appropriate training in the use of non-lethal weapons of the type to be issued to the officer;
- (b) the officer must successfully have undergone psychometric evaluation; and
- (c) the officer must give a written undertaking to control and use the non-lethal weapon strictly in accordance with any official instructions.

**Conditions subject to which non-lethal weapons and protective and defensive equipment are issued**

**33.12** A non-lethal weapon and any protective and defensive equipment are issued to a customs officer subject to the following conditions:

- (a) The non-lethal weapon and protective and defensive equipment may not without the permission of that officer's supervisor be left in the custody of another person.
- (b) The non-lethal weapon and protective and defensive equipment must after every shift be returned to the SARS official responsible for the custody of firearms, non-lethal weapons and protective and defensive equipment.
- (c) The officer is subject to periodic training in control and defensive tactics and scenario-based training as the Commissioner may require.
- (d) The non-lethal weapon and protective and defensive equipment may not be used for private purposes.
- (e) The Commissioner may at any time –
  - (i) request the officer to return the non-lethal weapon or protective and defensive equipment; or
  - (ii) instruct another customs officer to remove the non-lethal weapon or protective and defensive equipment from the officer's possession.

### **Use of non-lethal weapons in incidents where persons were injured**

**33.13** (1) Whenever a person is injured through the use of a non-lethal weapon issued to a customs officer, the officer must immediately submit a report on the incident to his or her supervisor.

- (2) An incident report referred to in subrule (1) must –
- (a) be submitted on Form ....as published as a rule on the SARS website; and
  - (b) state –
    - (i) the circumstances in which, and the reasons why, the non-lethal weapon was used;
    - (ii) the name and address and other personal details of the injured person that are available to the officer;
    - (iii) the nature of the injury;
    - (iv) whether any goods were damaged in the incident and, if so –
      - (aa) the name and address and other personal details of the owner or person in whose possession the goods were that are available to the officer; and
      - (bb) the nature and extent of the damage;
    - (v) whether the incident was reported to the South African Police Service, and if so, the Crime Administration System (CAS) number issued by South African Police Service; and
    - (vi) any other information required on the form.

### **Theft or loss of non-lethal weapons and protective and defensive equipment**

**33.14** (1) A customs officer to whom a non-lethal weapon or any protective and defensive equipment has been issued must immediately report to his or her supervisor any theft or loss of the non-lethal weapon or protective and defensive equipment.

- (2) A theft or loss report referred to in subrule (1) must –
- (a) be submitted on Form ....as published as a rule on the SARS website; and
  - (b) state –

- (i) the circumstances in which the non-lethal weapon or protective and defensive equipment was stolen or lost;
- (ii) whether the incident was reported to the South African Police Service, and if so, the Crime Administration System (CAS) number issued by South African Police Service; and
- (iii) any other information required on the form.

### **Non-compliance or negligence ground for disciplinary or dismissal or proceedings**

**33.15** A customs officer to whom a non-lethal weapon or any protective and defensive equipment has been issued is subject to disciplinary or dismissal proceedings if the officer –

- (a) contravenes or fails to comply with a provision of a rule contained in this Part; or
- (b) acts negligently in the use of the non-lethal weapon or in his or her possession of the non-lethal weapon or protective and defensive equipment.

### ***Part 4: Customs patrol boats (section 751(1)(b))***

#### **Crew of customs patrol boats**

**33.16** (1) A customs patrol boat must be operated by a team of customs officers consisting of a captain and at least three other crew members.

(2) Customs officers operating a customs patrol boat must have the requisite skills and experience to operate the boat and its equipment.

#### **Boarding of vessels from customs patrol boats**

**33.17** When boarding another vessel from a customs patrol boat, the customs officer boarding the other vessel must –

- (a) be clothed in the official customs uniform;
- (b) identify himself or herself by producing his or her identity card issued in terms of section 13 of the Control Act; and
- (c) state the reason for boarding the vessel.

### **Incidents involving the firing of patrol boat weapons**

**33.18 (1)** Whenever a customs patrol boat weapon is discharged, the captain of the boat must immediately upon returning to base submit a report on the incident to his or her supervisor.

(2) An incident report referred to in subrule (1) must –

- (a) be submitted on Form ....as published as a rule on the SARS website; and
- (b) state –
  - (i) the circumstances in which, and the reasons why, and the date and time the weapon was discharged;
  - (ii) the name and other details of any vessel involved in the incident;
  - (iii) whether any person was injured in the incident and, if so –
    - (aa) the name and address and other personal details of the injured person that are available to the captain; and
    - (bb) the nature of the injury and whether it was fatal or not;
  - (iv) whether any goods were damaged in the incident and, if so –
    - (aa) the name and address and other personal details of the owner or person in whose possession the goods were that are available to the captain; and
    - (bb) the nature and extent of the damage;
  - (v) whether any person was arrested during the incident and, if so –
    - (aa) the name and address, nationality and other personal details of person arrested that are available to the captain; and
    - (bb) the reason for the arrest;
  - (vi) whether the incident was reported to the South African Police Service, and if so, the Crime Administration System (CAS) number issued by South African Police Service; and
  - (vii) any other information required on the form.

(3) This rule does not apply if the weapon is discharged for purposes of official target practice.



## **Part 5: Other matters**

### **Taking and receiving of samples by customs officers** (*section 724(3)(b)*)

**33.19** (1) A customs officer taking or receiving a sample of goods in the exercise of his or her powers in terms of section 724 of the Control Act must promptly issue a receipt for the sample to the person in physical control of the goods.

(2) The receipt must reflect the following particulars:

- (a) a description of the goods from which the sample was taken;
- (b) the quantity of the sample;
- (c) the place where and the date on which the sample was taken;
- (d) the name of the customs officer who took or received the sample;
- (e) the purpose for which the sample was taken;
- (f) the customs value of the sample; and
- (g) whether the sample will be returned to the goods.

(3) When taking or handling samples, a customs officer must follow any applicable –

- (a) health and safety guidelines; and
- (b) official instructions, including any standard operating procedures regulating the handling and safeguarding of samples.

(4) The rates applicable to special customs services apply when samples are taken on request by another or as a result of a refund application, tariff classification application or value determination.

### **Directions to persons to formally appear before designated customs officers** (*section 730(2)(a)*)

**33.20** (1) A notice issued to a person in terms of section 730 of the Control Act to appear before a designated customs officer to produce any goods or documents or to answer questions must –

- (a) be on Form ...as published as a rule on the SARS website; and
- (b) state, in addition to the matters referred to in that section –

- (i) particulars of the failure by that person to comply with a request by a customs officer to produce goods or documents or to answer questions, including –
  - (aa) the date on which and the place where the failure occurred; and
  - (bb) the name of that customs officer; and
- (ii) the consequences for that person if he or she fails to appear before the designated customs officer at the time and place specified in the notice.

(2) A person appearing before a designated customs officer may during the proceedings be assisted by another person, including a legal practitioner.

### **Offences**

**33.21** A customs officer to whom a firearm has been issued is guilty of an offence if that officer –

- (a) contravenes a condition relating to that firearm contained in rule **33.6(a)(ii)**, (b) or (e);
- (b) fails to comply with a request referred to in rule **33.6(f)(i)**; or
- (c) acts negligently in the use of that firearm and such negligence resulted in the death or wounding of a person.

**CHAPTER 34**  
**DETENTION, SEIZURE AND CONFISCATION OF GOODS**

***Part 1: Detention of goods***

**Other circumstances in which goods or documents may be detained** (*section 754(1)(c) and (2)(c)*)

**34.1** A customs officer may, in addition to the purposes set out in –

- (a) section 754(1)(a) and (b) of the Control Act, detain goods also for the purpose of investigating or determining whether the goods are goods to which an international agreement or an international obligation binding on the Republic which prohibits, restricts or controls the import into or export from the Republic, relates; and
- (b) section 754(2)(a) and (b), detain any document also for the purpose of investigating or determining whether any goods to which the document relates are goods to which an international agreement or an international obligation binding on the Republic which prohibits, restricts or controls the import into or export from the Republic, relates.

**Notices of detention** (*section 757(4)(d)*)

**34.2** A notice of detention must in addition to the particulars set out in paragraphs (a) to (c) of section 757(4) of the Control Act, also reflect –

- (a) the reference number and date of issue of the notice;
- (b) the name and designation of the customs officer issuing the notice;
- (c) the address of the place where the goods are detained;
- (d) the name of the person referred to in section 757(1) to whom the notice is issued, and the customs code of that person, if that person has a customs code;
- (e) in the case of goods in respect of which a clearance declaration has been submitted, the movement reference number of the clearance declaration;
- (f) the transport document number in relation to the goods, if available;
- (g) a general description of the condition of the goods; and
- (h) the date and time when inspection of the goods is scheduled to take place.

**Request to be present when detained goods are inspected or opened** (*section 758(1)*)

**34.3** (1) A request by a person referred to in section 758(1)(a), or that person's representative, to be present during an inspection of goods or during the opening of a package or container that has been detained, must be –

- (a) directed either orally or in writing to a customs officer; or
- (b) submitted to the customs authority electronically through eFiling.

(2) A request submitted in writing or electronically must reflect –

- (a) the customs code of the person referred to in section 758(1)(a);
- (b) the reference number of the notice of detention; and
- (c) if the person contemplated in paragraph (a) will be represented by another person during the inspection or the opening of the package or container, the name, capacity and contact details of that person.

(3) A request in terms of this rule must be directed to a customs officer or submitted to the customs authority within 24 hours of issuing of a notice of detention in terms of section 757.

(4) A person who directed or submitted a request in terms of this rule is entitled to be informed of the time appointed for the inspection or the opening of the package or container.

**Application for permission to remove detained goods from place where kept or stored** (*section 759(2)*)

**34.4** (1) (a) Permission contemplated in section 759(2) of the Control Act must be obtained by submitting an application for permission to remove detained goods to the customs authority electronically through eFiling, subject to paragraph (b).

(b) If an application referred to in paragraph (a) is submitted to the customs authority in paper format in circumstances where submissions in paper format are permissible,<sup>8</sup> the submission must be –

- (i) on Form ....as published as a rule on the SARS website; and
- (ii) made to the Customs Office serving the area where the detained goods are kept.

(2) An application referred to in subrule (1) must reflect –

(a) the following information in relation to the applicant:

(i) The applicant's customs code;

(ii) if the applicant is a –

(aa) natural person, the applicant's identity number or passport number; or

(bb) juristic entity, the name of the person authorised to act on behalf of the entity, as well as that person's physical address, contact details, identity or passport number and designation;

(b) the current location of the detained goods;

(c) the reference number of the notice of detention, if available;

(d) the movement reference number of the clearance declaration in respect of the goods;

(e) if the application relates to only a portion of the detained consignment, a description of the relevant goods, which description must include –

(i) the tariff classification;

(ii) the quantity, volume or weight of the goods, as may be applicable; and

(iii) any marks and numbers on the goods, if applicable;

(f) a motivation setting out the reason why the facilities at the current location are not suitable for the detention of the goods and why the goods should be removed;

(g) the physical address of the place to which the detained goods will be removed;

(h) a description of –

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<sup>8</sup> See section 913(4) of the Control Act.

- (i) the security measures at the place to which the goods will be removed, to ensure that the integrity of the goods are not compromised; and
- (ii) the infrastructure, personnel and equipment available at that place to enable the suitable or specialised storage and handling required in respect of goods of that class or kind.

(3) An application referred to in subrule (1) must be supported by any documents that can substantiate the information referred to in subrule (2).

(4) Supporting documents referred to in subrule (3) must accompany the application referred to in subrule (2).

## **Part 2: Seizure of goods**

### **Other circumstances in which goods may be seized** (section 762(1)(d))

**34.5** The customs authority may, in addition to the circumstances set out in section 762(1)(a) to (c) of the Control Act, seize goods if the goods were imported or exported in contravention of an international agreement or an international obligation binding on the Republic which prohibits, restricts or controls the import into or export from the Republic of those goods.

### **Notice of seizure** (section 763(4)(d))

**34.6** A notice of seizure must in addition to the particulars set out in paragraphs (a) to (c) of section 763(4) of the Control Act, also reflect –

- (a) the reference number and date of issue of the notice;
- (b) the name and designation of the customs officer issuing the notice;
- (c) if the goods were detained prior to seizure, the reference number of the notice of detention;
- (d) the address of the place where the seized goods are to be kept;
- (e) the name of the person referred to in section 763(1) to whom the notice is issued, and the customs code of that person, if that person has a customs code;
- (f) in the case of goods in respect of which a clearance declaration has been submitted, the movement reference number of the clearance declaration;

- (g) the transport document number in relation to the goods, if available; and
- (h) the general condition of the goods.

**Applications for termination of seizure** (*section 765(3)(b) read with 770*)

**34.7** (1) (a) An application for termination of a seizure of goods as contemplated in section 765(1) of the Control Act, must within 30 days of the date of seizure of the goods<sup>9</sup> be submitted to the customs authority electronically through eFiling, subject to paragraph (b).

(b) If an application referred to in paragraph (a) is submitted to the customs authority in paper format in circumstances where submissions in paper format are permissible,<sup>10</sup> the submission must be –

- (i) on Form ...as published as a rule on the SARS website; and
- (ii) made to the Customs Office serving the area where the seized goods are kept.

(2) An application for termination of seizure must in addition to the information required in section 765(3)(a) reflect –

- (a) the following information in relation to the applicant:
  - (i) The applicant's customs code or, if the applicant does not have a customs code, the applicant's name, physical address and contact details;
  - (ii) if the applicant is a natural person, the applicant's identity number or passport number;
  - (iii) if the applicant is a juristic entity, the name of the person authorised to act on behalf of the entity, as well as that person's physical address, contact details, identity or passport number and capacity;
- (b) a statement that the applicant is the owner of the goods; and
- (c) the reference number of –
  - (i) the notice of detention issued in respect of the goods, if any; and
  - (ii) the notice of seizure issued in respect of the goods.

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<sup>9</sup> If no application for termination of seizure is received by the customs authority within 30 calendar days from the date of seizure of the goods, the customs authority must in terms of section 766(2)(a) of the Control Act confiscate the goods.

<sup>10</sup> See section 913(4) of the Control Act.

- (3) An application referred to in subrule (1) must be supported by –
- (a) any documentary evidence that the applicant is the owner of the goods, which evidence may include –
    - (i) a copy of a contract of sale indicating the applicant as the buyer;
    - (ii) a copy of an invoice or sales receipt issued to the applicant; or
    - (iii) a copy of a court judgement indicating the applicant as the owner;
  - (b) any documentary evidence substantiating the reason why the seizure should be terminated as relied on in the application; and
  - (c) in the case of the applicant being –
    - (i) a natural person, a copy of the identity document or passport of the applicant; or
    - (ii) a juristic entity, a copy of the document authorising the person who submitted the application on behalf of the entity, to act on behalf of the entity.
- (4) Supporting documents referred to in subrule (3) must accompany the application referred to in subrule (1).

### **Part 3: Confiscation of goods**

#### **Notices of confiscation** (*section 766(3)*)

**34.8** A notice of confiscation referred to in section 766(3) of the Control Act must –

- (a) identify the goods to which it relates;
- (b) state the date from which the goods are confiscated;
- (c) reflect –
  - (i) a reference number and the date of issue;
  - (ii) the reference number and date of the notice of seizure issued in relation to the goods;
  - (iii) the name and designation of the customs officer issuing the notice of confiscation; and
  - (iv) the name of the person referred to in section 763(1), and the customs code of that person, if available.



**Applications for withdrawal of confiscation** (*section 768(3)(b) read with 770*)

**34.9** (1) (a) An application for withdrawal of the confiscation of goods as contemplated in section 768(1) of the Control Act must be submitted to the customs authority –

- (i) within 30 calendar days of the date of confiscation; and
- (ii) electronically through eFiling, subject to paragraph (b).

(b) If an application referred to in paragraph (a) is submitted to the customs authority in paper format in circumstances where submissions in paper format are permissible,<sup>11</sup> the submission must be –

- (i) on Form ...as published as a rule on the SARS website; and
- (ii) be made to the Customs Office serving the area where the confiscated goods are kept.

(2) An application for withdrawal of confiscation must reflect –  
(a) the following information in relation to the applicant:

- (i) The applicant's customs code or, if the applicant does not have a customs code, the applicant's name, physical address and contact details;
  - (ii) if the applicant is a natural person, the applicant's identity number or passport number;
  - (iii) if the applicant is a juristic entity, the name of the person authorised to act on behalf of the entity, as well as that person's physical address, contact details, identity or passport number and capacity;
- (b) a statement that the applicant is the owner of the goods;
- (c) the reference number of the notice of confiscation issued in respect of the relevant goods; and
- (d) whether the applicant has submitted an application for termination of seizure in terms of rule **34.6** in respect of the goods which has been refused by the customs authority.<sup>12</sup>

(3) An application referred to in subrule (1) must be supported by –

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<sup>11</sup> See section 913(4) of the Control Act.

<sup>12</sup> An application for withdrawal of confiscation based on the same grounds on which the refused application for termination of seizure was based, will be refused.

- (a) documentary evidence that the applicant was the owner of the goods prior to confiscation, which evidence may include –
    - (i) a copy of a contract of sale indicating the applicant as the buyer;
    - (ii) a copy of an invoice or sales receipt issued to the applicant; or
    - (iii) a copy of a court judgement indicating that the applicant is the owner;
  - (b) any documentary evidence substantiating the reason why the confiscation should be withdrawn as relied on in the application; and
  - (c) in the case of the applicant being –
    - (i) a natural person, a copy of the identity document or passport of the applicant; or
    - (ii) a juristic entity, a copy of the document authorising the person who submitted the application on behalf of the entity, to act on behalf of the entity.
- (4) Supporting documents referred to in subrule (3) must accompany the application referred to in subrule (1).

**CHAPTER 35**  
**PROHIBITED, RESTRICTED AND SECTORALLY CONTROLLED GOODS**

***Part 1: Prohibited goods***

**Additional particulars to be reflected on notices of detention** (*section 778(3)(d)*)

**35.1** A notice of detention issued in respect of prohibited goods in terms of section 778(3) of the Control Act must in addition to the particulars set out in paragraphs (a) to (c) of that subsection, also reflect –

- (a) the reference number and date of issue of the notice;
- (b) the name and designation of the customs officer issuing the notice;
- (c) the address of the place where the detained prohibited goods are kept;
- (d) the name of the person referred to in section 778(1)(a) to whom the notice is issued, and the customs code of that person, if that person has a customs code;
- (e) in the case of goods in respect of which a clearance declaration has been submitted, the movement reference number of the clearance declaration; and
- (f) the transport document number in relation to the goods, if available.

**Applications for termination of detention** (*section 780(2)(a) and (b) read with section 903(1)(i)*)

**35.2** (1) If a person referred to in section 780(2)(a) or (b) of the Control Act intends to apply for the termination of a detention of prohibited goods<sup>13</sup> as contemplated in that section, that person must within three working days of the date of detention of the goods –

- (a) in the case of imported prohibited goods, submit an export clearance declaration in respect of those goods; or

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<sup>13</sup> Note that only the importer or exporter, or the importer or exporter's registered agent, may submit such an application, and only in the circumstances set out in section 780(2)(a)(i) and (ii), for goods of which the import but not the possession is prohibited, and (b)(i) and (ii), for goods of which the export but not the possession is prohibited.

(b) in the case of prohibited goods that were in the process of being exported, request a withdrawal of the export clearance declaration.<sup>14</sup>

(2) (a) Submission of an export clearance declaration in terms of subrule (1)(a) must be regarded as an application contemplated in section 780(2)(a), and release by the customs authority must be regarded as approval of the application.

(b) Request for withdrawal of a clearance declaration in terms of subrule (1)(b) must be regarded as an application contemplated in section 780(2)(b), and acceptance of the withdrawal request by the customs authority must be regarded as approval of the application.

(3) An export clearance declaration referred to in subrule (1)(a) must –

(a) in addition to the information required in terms of section 367, indicate that it is a clearance declaration for the export of previously imported prohibited goods; and

(b) be accompanied by a copy of a letter or other document from the administering authority confirming that it has no objection to the goods being exported.<sup>15</sup>

(4) A request for withdrawal referred to in subrule (1)(b) must be supported a copy of a letter or other document from the administering authority confirming that it has no objection to the goods reverting to free circulation.

(5) If an application in terms of this rule is granted, the applicant must pay to the Commissioner –

(a) any administrative penalty that may be payable in respect of the goods; and

(b) any expenses incurred by the Commissioner in connection with the detention of the goods.

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<sup>14</sup> See section 175(2)(e) of the Control Act.

<sup>15</sup> See section 780(3) of the Control Act.

## **Part 2: Restricted goods**

### **Additional particulars to be reflected on notices of detention** (*section 787(3)(d)*)

**35.3** A notice of detention issued in respect of restricted goods in terms of section 787(3) of the Control Act must in addition to the particulars set out in paragraphs (a) to (c) of that subsection, also reflect –

- (a) the reference number and date of issue of the notice;
- (b) the name and designation of the customs officer issuing the notice;
- (c) the address of the place where the detained restricted goods are kept;
- (d) the name of the person referred to in section 787(1)(a) to whom the notice is issued, and the customs code of that person, if that person has a customs code;
- (e) in the case of goods in respect of which a clearance declaration has been submitted, the movement reference number of the clearance declaration; and
- (f) the transport document number in relation to the goods, if available.

### **Application for termination of detention** (*section 789(2)(a) and (b) read with section 903(1)(i)*)

**35.4** (1) If a person referred to in section 789(2)(a) or (b) of the Control Act intends to apply for the termination of a detention of restricted goods as contemplated in that section,<sup>16</sup> that person must within three working days of the date of detention of the goods –

- (a) in the case of imported restricted goods, submit an export clearance declaration in respect of those goods; or
- (b) in the case of restricted goods that were in the process of being exported, request a withdrawal of the export clearance declaration.<sup>17</sup>

(2) (a) Submission of an export clearance declaration in terms of subrule (1)(a) must be regarded as an application contemplated in section 789(2)(a),

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<sup>16</sup> Note that only the importer or exporter, or the importer or exporter's registered agent, may submit such an application, and only in the circumstances set out in section 789(2)(a)(i) and (ii), for goods of which the import but not the possession is restricted, and (b)(i) and (ii), for goods of which the export but not the possession is restricted.

<sup>17</sup> See section 175(2)(e) of the Control Act.

and release by the customs authority must be regarded as approval of the application.

(b) Request for withdrawal of a clearance declaration in terms of subrule (1)(b) must be regarded as an application contemplated in section 789(2)(b), and acceptance of the withdrawal request by the customs authority must be regarded as approval of the application.

(3) An export clearance declaration referred to in subrule (1)(a) must –

- (a) in addition to the information required in terms of section 367, indicate that it is a clearance declaration for the export of prohibited goods; and
- (b) be supported by a copy of a letter or other document from the administering authority confirming that it has no objection to the goods being exported.<sup>18</sup>

(4) A request for withdrawal referred to in subrule (1)(b) must be supported a copy of a letter or other document from the administering authority confirming that it has no objection to the goods reverting to free circulation.

(5) If an application is granted, the applicant must pay to the Commissioner –

- (a) any administrative penalty that may be payable in respect of the goods; and
- (b) any expenses incurred by the Commissioner in connection with the detention of the goods.

### ***Part 3: Sectorally controlled goods***

#### **Additional particulars to be reflected on notices of detention** (*section 796(3)(d)*)

**35.5** A notice of detention issued in respect of sectorally controlled goods in terms of section 796(3) of the Control Act must in addition to the particulars set out in paragraphs (a) to (c) of that subsection, also reflect –

- (a) the reference number and date of issue of the notice;
- (b) the name and designation of the customs officer issuing the notice;
- (c) the address of the place where the sectorally controlled goods are detained;

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<sup>18</sup> See section 789(3) of the Control Act.

- (d) the name of the person referred to in section 796(1)(a) to whom the notice is issued, and the customs code of that person, if that person has a customs code;
- (e) the movement reference number of the clearance declaration submitted in respect of the goods; and
- (f) the transport document number in relation to the goods, if available.

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## CHAPTER 36 COUNTERFEIT GOODS

### Definitions

**36.1** In this Chapter, unless the context otherwise indicates –

“**Paris Convention**” has the meaning assigned to it in section 1 of the Trade Marks Act; and

“**Trade Marks Act**” means the Trade Marks Act, 1993 (Act No. 194 of 1993).

### *Part 1: Applications for detention of suspected counterfeit goods and notices of detention*

#### **Application by right-holders for detention of suspected counterfeit goods** *(section 805(2) and 809(2))*

**36.2** (1) (a) An application by a right-holder for the detention of suspected counterfeit goods in terms of section 805(2) and 809(2) of the Control Act must be submitted to the customs authority electronically through eFiling, subject to paragraph (b).

(b) If an application referred to in paragraph (a) is submitted to the customs authority in paper format in circumstances where submissions in paper format are permissible,<sup>19</sup> the submission must be –

- (i) on Form ....as published as a rule on the SARS website; and
- (ii) made to the Customs Office designated by the Commissioner in terms of section 14 of the Control Act to receive applications for licensing and registration.

(2) An application referred to in subrule (1) must reflect –

- (a) a reference number;
- (b) the following information in relation to the applicant:

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<sup>19</sup> See section 913(4) of the Control Act.



- (i) The applicant's customs code, or if the applicant does not have a customs code, name, physical address and contact details;
  - (ii) if the applicant is –
    - (aa) a natural person, the applicant's identity number or passport number; or
    - (bb) a juristic entity, the name of the person authorised to act on behalf of the entity, as well as that person's physical address, contact details, identity or passport number and designation or capacity; and
  - (iii) if the application is submitted on behalf of the applicant by a representative, also the name, physical address and contact details of the representative;
- (c) sufficient particulars of the protected goods as required in section 805(2)(b) or 809(2)(b), as may be applicable, which must, as a minimum, include the following:
- (i) The brand name of the protected goods;
  - (ii) the tariff classification;
  - (iii) whether the intellectual property right in the protected goods is –
    - (aa) a registered trade mark;
    - (bb) a trade mark which is entitled to protection under the Paris Convention as a well-known trade mark within the meaning of section 35(1) of the Trade Marks Act;
    - (cc) a copyright; or
    - (dd) a mark to which 15 of the Merchandise Marks Act, 1941, applies;
  - (iv) particulars of any official recognition of that right by any country and, in the case of a trade mark registered in the Republic, the registration number;
  - (v) the expiry date of that right, if any;
  - (vi) the name of the author, in the case of a copyright; and
  - (vii) the country in which those protected goods are produced;
- (d) information as required in section 805(2)(b) or 809(2)(b), as may be applicable, that describes the essential physical and other distinctive features,

- elements and characteristics of goods that may indicate that the goods are counterfeit goods infringing the rights attached to those protected goods; and
- (e) the minimum quantity of goods that should be detained by the customs authority to enable the right-holder to apply to a court for a finding that the goods are counterfeit goods that infringe that right-holder's intellectual property right.

(3) An application referred to in subrule (1) must in addition to the documents referred to in section 805(2)(e)(i) and (ii) or section 809(2)(e)(i) and (ii), as may be applicable, be accompanied by –

- (a) photographs or brochures that may assist with describing –
  - (i) the protected goods which are the subject of the application; and
  - (ii) the alleged counterfeit goods, if available;
- (b) if the right-holder for purposes of the application is a person referred to in paragraph (d) of the definition of “right-holder” in section 803, a document authorising that person to act in relation to those protected goods in the Republic;
- (c) if the applicant is a juristic entity, a document authorising a person contemplated in subrule (2)(b)(ii)(bb) to act on behalf of the applicant;
- (d) if the application is submitted by a representative referred to subrule (2)(b)(iii), a document authorising that representative to submit the application on behalf of the applicant;
- (e) in the case of a trade mark registered in the Republic, a certificate of registration issued in terms of the Trade Marks Act or a copy of an entry in the trade mark register certified by the registrar of trademarks referred to in that Act;
- (f) in the case of a trade mark entitled to protection under the Paris Convention as a well-known trade mark within the meaning of section 35(1) of the Trade Marks Act, an affidavit deposed to by or on behalf of the applicant confirming that the trade mark falls within the meaning of section 35 of that Act and that the applicant is a right-holder in relation to that trade mark;
- (g) in the case of a copyright, an affidavit deposed to by or on behalf of the applicant confirming that the applicant is a right-holder in relation to that copyright;

- (h) in the case of a mark to which section 15 of the Merchandise Marks Act, 1941 (Act 17 of 9141), applies, an affidavit deposed to by or on behalf of the applicant confirming that the applicant is a right-holder in relation to that mark;
- (i) a list of persons authorised by the right-holder to import or export the protected goods, if any;
- (j) a list of persons that in the past imported or exported counterfeit goods that infringed the intellectual property right attached to the protected goods, if any; and
- (k) an indemnity referred to in section 805(2)(e)(i) or 809(2)(e)(i) and an undertaking referred to in section 805(2)(e)(ii) or 809(2)(e)(ii), as may be applicable.

(4) The administration fee for purposes of section 805(2)(e)(iii) and section 809(2)(e)(iii) is R 2000,00.

#### **Form and format of indemnity and undertaking to pay costs** (section 822(e))

**36.3** An indemnity referred to in sections 805(2)(e)(i) and 809(2)(e)(i) of the Control Act and an undertaking referred to in sections 805(2)(e)(ii) and 809(2)(e)(ii) of that Act must be –

- (a) submitted to the customs authority –
  - (i) as a combined document on Form .....published as a rule on the SARS website for that purpose; and
  - (ii) in the same format in which the application which it accompanies is submitted;<sup>20</sup> and
- (b) be signed by the applicant and two witnesses.

#### **Detention notices in respect of suspected counterfeit goods** (section 807(4)(d) and 810(2)(b))

**36.4** (1) A detention notice in respect of suspected counterfeit goods referred to in sections 807(4) of the Control Act must in addition to the particulars set out in paragraphs (a) to (c) of section 807(4), also reflect –

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<sup>20</sup> I.e. if an application referred to in rule 36.2 is submitted electronically through eFiling as contemplated in subrule (1)(a) of that rule, the indemnity accompanying that application must be submitted simultaneously through eFiling, and if the application is submitted manually as contemplated in subrule (1)(b) of that rule, the indemnity must also be submitted manually.

- (a) the reference number and date of issue of the notice;
- (b) the name and designation of the customs officer issuing the notice;
- (c) the address of the place where the detained suspected counterfeit goods are kept;
- (d) the name of the person to whom the notice is issued, and the customs code of that person, if that person has a customs code;
- (e) in the case of goods in respect of which a clearance declaration has been submitted, the movement reference number of the clearance declaration; and
- (f) the transport document number in relation to the goods, if available.

(2) A detention notice in respect of suspected counterfeit goods referred to in section 810(2)(b) must reflect –

- (a) the date from which the goods are detained;
- (b) the reason for the detention; and
- (c) the other information set out in subrule (1)(a) to (f).

**Notifications to right-holders that goods were detained** (*section 807(1)(c) read with section 822*)

**36.5** A notification to a right-holder referred to in section 807(1)(c) of the Control Act must in addition to the information referred to in section 807(1)(c)(i) and (ii), also contain –

- (a) a description of the goods detained as suspected counterfeit goods, which description must include –
  - (i) the class or kind of goods;
  - (ii) the country of origin;
  - (iii) any essential or distinctive features, elements or characteristics of the goods; and
  - (iv) the quantity, volume or weight of the goods, as may be applicable; and
- (b) the address of the place where the detained suspected counterfeit goods are kept.

## ***Part 2: Procedures for detained suspected counterfeit goods***

### **Inventory of suspected counterfeit goods detained (section 811)**

**36.6** (1) A customs officer who has detained suspected counterfeit goods must within three working days after a detention notice referred to in rule **36.4** was issued in terms of section 807(1)(b) or 810(2)(b) of the Control Act, compile an inventory of such goods as contemplated in section 811.

(2) An inventory referred to in subrule (1) must reflect –

- (a) the reference number of the inventory;
- (b) the name, designation and contact number of the customs officer who detained the goods;
- (c) the place, date and time of detention;
- (d) the reference number of the detention notice referred to in rule **36.4** issued in respect of the goods;
- (e) the name, physical address and contact details of the owner, importer or exporter of the goods;
- (f) a list of the goods detained, including a description of –
  - (i) the class or kind of goods;
  - (ii) the country of origin;
  - (iii) any essential or distinctive features, elements or characteristics of the goods that allegedly infringe a right attached to the relevant protected goods; and
  - (iv) the quantity, volume or weight of the detained goods as may be applicable;
- (g) a declaration by the customs officer referred to in paragraph (b) that the goods reflected in the list have been detained as suspected counterfeit goods;
- (h) the reference number of any authorisation pursuant to a request referred to in rule **36.8**; and
- (i) provision for an acknowledgement of receipt of the goods by the person in charge of a counterfeit goods depot, if the goods are removed to a counterfeit goods depot in terms of section 815.

(3) If the goods are removed to a counterfeit goods depot in terms of section 815, a copy of the inventory reflecting acknowledgement of receipt of the person in charge of the counterfeit goods depot must be provided to the person in charge of the depot.

**Requests for personal details of affected parties** (*section 812(1)*)

**36.7** (1) (a) A request in terms of section 812(1) of the Control Act by a right-holder to the customs authority for personal details of affected parties, must be submitted to the customs authority electronically through eFiling, subject to paragraph (b).

(b) If a request referred to in paragraph (a) is submitted to the customs authority in paper format in circumstances where submissions in paper format are permissible,<sup>21</sup> the submission must be –

- (a) on Form ....as published as a rule on the SARS website; and
- (b) made to the Customs Office serving the area where the detained suspected counterfeit goods are kept.

(2) A request referred to in subrule (1) must reflect –

(a) the following information in relation to the right-holder:

- (i) The right-holder's customs code, or if the right-holder does not have a customs code, the right-holder's name, physical address and contact details; and
- (ii) if the right-holder is a –
  - (aa) natural person, the right-holder's identity number or passport number; or
  - (bb) a juristic entity, the name of the person authorised to act on behalf of the entity, as well as that person's physical address, contact details, identity or passport number and designation or capacity; and
- (iii) if the request is submitted on behalf of the right-holder by a representative, also the name, physical address and contact details of the representative;

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<sup>21</sup> See section 913(4) of the Control Act.

- (b) the reference number of the notification sent to the right-holder in terms of section 807(1)(c) or 810(2)(c); and
- (c) a request to furnish the name and address and contact details of any person who is an affected party in relation to the suspected counterfeit goods detained.

**Requests for samples of detained suspected counterfeit goods** (*section 813(1)*)

**36.8** (1) (a) A request in terms of section 813(1) of the Control Act by a right-holder to the customs authority for the furnishing of samples of detained goods suspected to be counterfeit goods, must be submitted to the customs authority electronically through eFiling, subject to paragraph (b).

(b) If a request referred to in paragraph (a) is submitted to the customs authority in paper format in circumstances where submissions in paper format are permissible,<sup>22</sup> the submission must be –

- (a) on Form ...as published as a rule on the SARS website; and
- (b) made to the Customs Office serving the area where the detained suspected counterfeit goods are kept.

(2) A request referred to in subrule (1) must reflect –

- (a) the information referred to in rule 36.7(2)(a) and (b);
- (b) the number of samples requested;
- (c) the proposed dates when the samples will be collected and returned; and
- (d) the identity of the person who will be collecting the samples, including name, identity number and designation.

**Requirements in relation to samples furnished in terms of section 813 of the Control Act** (*813(2)(c)*)

**36.9** If a request referred to in rule 36.8 is granted, sampling of goods must take place in accordance with the following requirements:

- (a) The right-holder or person acting on the right-holder's behalf collecting the samples, must produce to the customs authority at the place where the detained counterfeit goods are kept –

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<sup>22</sup> See section 913(4) of the Control Act.

- (i) that person's identity document;
  - (ii) in the case of a person acting on behalf of the right-holder, also an authorisation to act on behalf of the right-holder; and
  - (iii) the reference number of the authorisation granted pursuant to the request for the furnishing of samples in terms of rule **36.8**;
- (b) the quantity furnished as samples may not be more than the quantity necessary for inspection or analysis, and counter-analysis, if required; and
- (c) the right-holder or a person acting on the right-holder's, must sign a sample register to confirm –
- (i) the identity of the person taking delivery of the samples, including name, identity number and designation;
  - (ii) the date and time when delivery of the samples is taken;
  - (iii) a full description of the samples, including the quantity; and
  - (iv) the anticipated date when the samples will be returned.

**Notices of intention whether court action is to be lodged** (*section 814(1)*)

**36.10** (1) (a) A notice of intention which a right-holder must submit to the customs authority in terms of section 814(1) of the Control Act must be submitted to the customs authority electronically through eFiling, subject to paragraph (b).

(b) If a notice referred to in paragraph (a) is submitted to the customs authority in paper format in circumstances where submissions in paper format are permissible,<sup>23</sup> the submission must be –

- (a) on Form ....as published as a rule on the SARS website; and
- (b) made to the Customs Office serving the area where the detained suspected counterfeit goods are kept.

(2) A notice referred to in subrule (1) must reflect –

- (a) the date of the notification;
- (b) the information referred to in rule **36.7(2)(a)**;
- (c) the reference number of the notification sent to the right-holder in terms of section 807(1)(c) or 810(2)(c);
- (d) whether the intention of the right-holder is –

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<sup>23</sup> See section 913(4) of the Control Act.



- (i) to apply to a court for a finding that the detained goods are counterfeit goods; or
  - (ii) not to apply for such a finding; and
- (e) the name and contact details of the person that will remove the goods to the counterfeit goods depot.

(3) When giving notice in terms of this rule of the intention to apply to a court for a finding that the detained goods are counterfeit goods, the right-holder must in terms of rule 1.3 apply for the provision of special customs services in relation to the removal of the goods to the counterfeit goods depot under customs supervision.

**Application for permission to discharge goods from counterfeit goods depot**  
(section 819(1)(b))

**36.11** (1) (a) An application by the person in charge of a counterfeit depot for the customs authority's permission to discharge goods from the depot as contemplated in section 819(1)(b) of the Control Act, must be submitted to the customs authority electronically through eFiling, subject to paragraph (b).

(b) If an application referred to in paragraph (a) is submitted to the customs authority in paper format in circumstances where submissions in paper format are permissible,<sup>24</sup> the application must be submitted –

- (i) on Form.....as published as a rule on the SARS website; and
- (ii) to the Customs Office designated by the Commissioner in terms of section 14 of the Control Act to receive applications for licensing and registration.

(2) An application referred to in subrule (1) must reflect –

- (a) the name and contact details of the person in charge of the counterfeit goods depot;
- (b) the physical address of the counterfeit goods depot;
- (c) the reference number of the inventory referred to in section 815(2)(b) read with rule 36.6 in respect of the goods to be discharged; and
- (d) the reason for the discharge of the goods from the counterfeit goods depot.

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<sup>24</sup> See section 913(4) of the Control Act.

## CHAPTER 37 DISPUTE RESOLUTION<sup>25</sup>

### Definition

**37.1** In this Chapter –

**“disputed or affected payment”** means a payment that is or will be in dispute, or is or will otherwise be affected by proceedings referred to in in section 827(1) of the Customs Control Act;

**“TAA Dispute Resolution Rules”** means the rules published in terms of the Tax Administration Act in Government Notice 550 of 2014, as may from time to time be amended.

### **Application for suspension or deferment of amounts payable to Commissioner** *(section 830)*

**37.1** (1) If a person aggrieved by a decision<sup>26</sup> of the Commissioner, a customs officer or a SARS official intends to lodge an objection against the decision in terms of section 827(1)(a) of the Customs Control Act, an application referred to in section 830(3) to suspend or defer a disputed or affected payment pending conclusion of the objection and any other proceedings referred to in section 827(1) that may follow disallowance of the objection, must be submitted to the customs authority –

- (a) not later than the expiry of the period within which that person may lodge the objection in terms of rule 7 of the TAA Dispute Resolution Rules; or
- (b) if reasons for the decision are requested in terms of rule 6 of the TAA Dispute Resolution Rules, not later than the expiry of the period within which reasons for the decision may in terms of that rule be requested.

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<sup>25</sup> Note that Chapter 9 of the Tax Administration Act and the regulations issued under that Chapter regulate all dispute resolution proceedings available to persons aggrieved by decisions taken in terms of the Customs Control Act, the Customs Duty Act and the Excise Duty Act and that no rules under Chapter 37 of the Control Act other than those dealt with above are accordingly necessary.

<sup>26</sup> See definition of “decision” in section 824 of the Control Act.

(2) (a) An application referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to paragraph (b).

(b) If an application referred to in subrule (1) is submitted to the customs authority in paper format in circumstances where submissions in paper format are permissible,<sup>27</sup> the application must be –

- (i) on Form ...as published as a rule on the SARS website; and
- (ii) submitted to the SARS office which communicated the decision to the applicant.

(3) An application referred to in subrule (1) must state the following information:

- (a) The applicant's customs code or, if the applicant falls within a category of persons excluded from the requirement to register, the applicant's name, identity number, contact number and physical address;
- (b) particulars of the decision complained against;
- (c) particulars of the disputed or affected payment which the applicant seeks to be suspended; and
- (d) a motivation why suspension of the payment is sought.

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<sup>27</sup> See for instance section 913(4) of the Control Act.

## CHAPTER 38

**TO BE INSERTED LATER**

**Please note that in terms of section 943 of the Control Act, this Chapter does not take effect on the effective date**

Draft

## CHAPTER 39 ADMINISTRATIVE PENALTIES

### Definition

**39.1** In this Chapter –

**“listed non-prosecutable breach”** means a breach of the Control Act listed in a notice issued by the Minister in terms of section 876(1) of that Act.

### **Contents of notices imposing fixed amount penalties** (*sections 877 and 884*)

**39.1** A fixed amount penalty notice issued in terms of section 877(1) of the Control Act to a person who committed a listed non-prosecutable breach must contain the following information:

- (a) The name of the person who committed the breach;
- (b) that person’s physical address;
- (c) the penalty notice number;
- (d) the number of the section of the Control Act or number of the rule that has been breached;
- (e) particulars of the breach and the date on which the breach was committed;
- (f) the category in which the breach falls;
- (g) the number of times the same non-prosecutable breach has been committed within the applicable three years’ cycle;<sup>28</sup>
- (h) the penalty amount;
- (i) due date for payment of penalty;
- (j) the name of the customs officer issuing the notice; and
- (k) a note drawing attention to the fact that an objection may in terms of section 883 be lodged against the imposition of the penalty.

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<sup>28</sup> See section 876(2) and (3) for applicable three year cycle.

**Contents of notices imposing prosecution avoidance penalties** (*sections 879 and 884*)

**39.2** A prosecution avoidance penalty notice issued in terms of section 879(1) of the Control Act to a person who allegedly committed a prosecutable breach must contain the following information:

- (a) The name of the person who allegedly committed the breach;
- (b) that person's physical address;
- (c) the penalty notice number;
- (d) the number of the section of the Control Act or number of the rule that has allegedly been breached;
- (e) particulars of the alleged breach and the date on which the breach was committed;
- (f) the penalty amount;
- (g) due date for payment of penalty;
- (h) the name of the customs officer issuing the notice; and
- (i) a note drawing attention to the fact that –
  - (i) prosecution can be avoided if the person elects to have the matter summarily settled by paying the penalty before the due date; and
  - (ii) an objection may in terms of section 883 be lodged against the amount of the penalty.<sup>29</sup>

**Contents of notices imposing missing goods penalties** (*sections 882 and 884*)

**39.1** A missing goods penalty notice issued in terms of section 882(1) of the Control Act to a person referred to in that section must contain the following information:

- (a) The name of the person to whom the notice is issued;
- (b) that person's physical address;
- (c) the penalty notice number;
- (d) particulars of the missing goods;
- (e) the reason why the goods are to be seized;
- (f) the penalty amount;<sup>30</sup>

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<sup>29</sup> Note that an objection in terms of section 883 of the Control Act can only be lodged against the amount of the penalty and not against the imposition of the penalty.

- (g) due date for payment of penalty;
- (h) the name of the customs officer issuing the notice; and
- (k) a note drawing attention to the fact that –
  - (i) the goods cannot readily be found;
  - (ii) the penalty is imposed in lieu of the missing goods; and
  - (iii) an objection may in terms of section 883 be lodged against the imposition or the amount of the penalty.

**Note**

**Please see attached list of non-prosecutable breaches for which fixed amount penalties may be imposed (“Annexure A”), to be published in terms of section 876 of the Control Act.**

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<sup>30</sup> The penalty must be equal to the customs value of the goods or, in the case of goods manufactured in an excise manufacturing warehouse, the value of the goods as determined in terms of the Excise Duty Act.

**CHAPTER 40**  
**JUDICIAL MATTERS**

**Notification to exonerate registered agents and directors, administrators and trustees from prosecution** (*section 893(1)(b) or (2)(b)*)

**40.1** (1) (a) A notification referred to in section 893(1)(b) or (2)(b) of the Control Act must be submitted to the customs authority electronically through eFiling, subject to paragraph (b).

(b) If a notification referred to in paragraph (a) is submitted to the customs authority in paper format in circumstances where submissions in paper format are permissible, submission must be –

- (i) on Form ... as published as a rule on the SARS website; and
- (ii) made to the Customs Office that serves the area in which the act was committed.

(2) A notification referred to in subrule (1) must reflect the following information:

- (a) If the notification is submitted by a registered agent in terms of section 893(1)(b) –
  - (i) the customs code of the registered agent; and
  - (ii) the customs code of the importer, exporter, carrier or other person not located in the Republic referred to in section 893(1) that committed the offence;
- (b) if the notification is submitted by a director, administrator or trustee of a juristic entity in terms of section 893(2)(b) –
  - (i) the name, contact details and designation of the director, administrator or trustee; and
  - (ii) the customs code of the juristic entity that committed the offence, or if the entity does not have a customs code, the name and registration number or tax reference number of the juristic entity;
- (c) a description of the act or omission that constituted the offence, and the date of commission; and



- (d) particulars of any steps taken by the person submitting the notification to prevent the act or omission referred to in paragraph (c) from being committed; and
- (e) if no steps were taken to prevent the act or omission, the reason for such inaction.

**Notice of intended judicial proceedings** (*section 896(2)*)

**40.2** (1) A notice referred to in section 896(1) of the Control Act must be submitted to the customs authority –

- (a) electronically through –
  - (i) eFiling; or
  - (ii) e-mail; or
- (b) by any of the methods contemplated in section 912(2)(a) to (c).

(2) A notice submitted in terms of subrule (1)(a)(ii) or (b), must –

- (a) be on Form ...as published as a rule on the SARS website; and
- (b) be submitted by making use of the details provided in subrule (3).

(3) Details for submission of a notice in terms of subrule (1)(a)(ii) and (b) are the following:

- (a) if sent through e-mail, the e-mail must be directed to the Senior Manager: Litigation (Customs) at the e-mail address indicated on the SARS website for receipt of such notifications;
- (b) if delivered by hand, the notice must be handed to –
  - (i) the Senior Manager: Litigation (Customs) at 381 Middel Street, First floor Khanyisa, Nieuw Muckleneuk, Pretoria; or
  - (ii) to another person at that office authorised in writing to receive such notices;
- (c) if sent by post, the notice must be sent by registered post to the Senior Manager: Litigation (Customs), Private Bag X923, Pretoria, 0001; and
- (d) if telefaxed, the fax must be directed to the Senior Manager: Litigation (Customs) and sent to the fax number indicated on the SARS website for receipt of such notifications.

(4) A notice referred to in subrule (1) must, in addition to the information required in terms of section 896(1)(a) to (c), also reflect –

- (a) the following information concerning the person intending to institute judicial proceedings:
  - (i) Customs code, if any;
  - (ii) contact details; and
  - (iii) if the notice is submitted on behalf of a juristic entity by a person authorised to act on behalf of the entity, that person's name and designation;
- (b) the name and contact details of the attorney or representative of the person intending to institute judicial proceedings;
- (c) details of the Customs Office where the cause of action arose or where the matter that gave rise to the cause of action was dealt with;
- (d) the name and contact details of the customs officer or committee that primarily dealt with the matter, if such details are available; and
- (e) the kind of judicial proceedings to be instituted.

(4) If a notice is submitted by registered post in accordance with subrule (2)(c), the 30 day period referred to in section 896(1) is calculated from the date of receipt of the notice at the address mentioned in subrule (2)(b).

**Application to enter into agreement to shorten notice period** (*section 896(3)(a)*)

**40.3** (1) A person intending to institute judicial proceedings against the Minister, the Commissioner, SARS, the customs authority, a customs officer or a SARS official on a cause of action arising from the enforcement of the Control Act, the Duty Act of the Excise Duty Act, that wishes to enter into an agreement contemplated in section 896(3) of the Control Act to shorten the notice period referred to in section 896(1), must apply for such an agreement in terms of this rule.

- (2) An application referred to in subrule (1) must –
  - (a) be submitted to the customs authority in accordance with rule **40.2(1)**;
  - (b) if submitted in accordance with rule **40.2(1)(a)(ii)** or (b) –
    - (i) be on Form ...as published as a rule on the SARS website; and
    - (ii) be submitted by making use of the details provided in rule **40.2(3)**.

(3) An application referred to in subrule (1) must reflect the following information:

- (a) The customs code of the applicant, or if the applicant does not have a customs code, name, contact details and physical address;
- (b) if the application is submitted on behalf of a juristic entity by a person authorised to act on behalf of the entity, that person's name and designation;
- (c) the name and contact details of the attorney or representative of the applicant;
- (d) the proposed notice period for which agreement is sought; and
- (e) a motivation for the shortening of the notice period.

**Application to enter into agreement to extend period for institution of judicial proceedings** (*section 897(2)(a)*)

**40.4** (1) A person who intends to institute judicial proceedings against the Minister, the Commissioner, SARS, the customs authority, a customs officer or a SARS official on a cause of action arising from the enforcement of the Control Act, the Duty Act or the Excise Duty Act, that wishes to enter into an agreement contemplated in section 897(2)(a)(3) of the Control Act to extend the one year period for the institution of such proceedings referred to in subsection (1) of that section, must apply for such an agreement in terms of this rule.

(2) An application referred to in subrule (1) must –

- (a) be submitted to the customs authority in accordance with rule **40.2(1)**; and
- (b) if submitted in accordance with rule **40.2(1)(a)(ii)** or (b) –
  - (i) be on Form ... as published as a rule on the SARS website; and
  - (ii) be submitted by making use of the details provided in rule **40.2(3)**.

(3) An application referred to in subrule (1) must reflect the following information:

- (a) The customs code of the applicant, or if the applicant does not have a customs code, name, contact details and physical address;
- (b) if the application is submitted on behalf of a juristic entity by a person authorised to act on behalf of the entity, that person's name and designation;
- (c) the name and contact details of the attorney or representative of the applicant;

- (d) the proposed extension for which agreement is sought; and
- (e) a motivation for the extension of the period.

**Notice of application for sale of arrested property** (*section 897(3)*)

**40.5** The address for purposes of section 897(3) of the Control Act is as follows:

The Senior Manager: Litigation (Customs) at 381 Middel Street, First Floor Khanyisa, Nieuw Muckleneuk, Pretoria.

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**CHAPTER 41**  
**MISCELLANEOUS MATTERS**

*Part 1: General*

**Definitions**

**41.1** In this Chapter—

**“computer-based record keeping system”** means a record keeping system referred to in section 919 of the Control Act capable of creating, receiving and storing electronic records or converting information and documents into electronic records;

**“digital signature”**, in relation to a registered electronic user communicating with the customs authority through EDI, means an electronic signature allocated by the customs authority to the user –

- (a) intended by the registered user using it and the customs authority accepting it to have the same force and effect as a manual signature; and
- (b) which is—
  - (i) unique to the registered user;
  - (ii) capable of verification;
  - (iii) linked or attached to electronically transmitted data in such a manner as to authenticate the attachment of the signature to particular data and the integrity of the data transmitted so that if the data is changed the signature is invalidated;
  - (iv) under the exclusive control of the registered user; and
  - (v) in compliance with any further requirements contained in the user agreement;

**“EDI”** or **“electronic data interchange”** means an electronic communication system for the electronic transfer of information from computer to computer, using a predetermined message standard, as determined by the customs authority, to structure such information;

**“eFiling”** means a SARS software application available on the SARS website which enables SARS and registered users to generate and deliver electronic filing transactions;<sup>31</sup>

**“electronic record”** means a record that is kept or stored in electronic form on a computer or on another electronic storage media device, whether that record was originally created in an electronic form or converted from any non-electronic form into an electronic form;

**“intermediary”** means a service provider managing –

- (a) a gateway for an EDI application through which EDI registered electronic users submit and receive electronic messages to and from the customs authority; or
- (b) an internet-based server through which registered electronic users log on to the SARS website for the submission and receipt of electronic messages to and from the customs authority through eFiling or another system referred to in rule 41.11(c);

**“record”** means any document or information that must be kept in terms of the Control Act or these Rules.

**“registered electronic user”** means a person registered in terms of section 606 of the Control Act as an electronic user;

**“representative”** –

- (a) in relation to electronic communication with the customs authority or where it occurs in Part 4, means a registered electronic user communicating with the customs authority on behalf of another person through a computer system referred to in rule 41.11, but excludes an intermediary; or
- (b) in relation to communication with the customs authority in a manner other than through a computer system referred to in rule 41.11, means a person

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<sup>31</sup> See rule 41.16(2)(c).

communicating with the customs authority in such manner on behalf of another person;

“**user agreement**” means an electronic user agreement referred to in rule **41.12(b)**.

**Criteria for determining means of transport as small vessels, light aircraft or vehicles as private means of transport** (*section 903(1)(n)*)<sup>32</sup>

**41.2** (1) A vessel entering or leaving the Republic qualifies for purposes of the Control Act as a small vessel used as a private means of transport if it –

- (a) has an overall hull length, measured parallel to the waterline, not exceeding 24 meters; and
- (b) is used by a traveler as a private means of transport and not for the transport of goods or persons for reward.

(2) An aircraft entering or leaving the Republic qualifies for purposes of the Control Act as a light aircraft if it –

- (a) has a gross take-off weight not exceeding 5,6 tons; and
- (b) is used by a traveler for the purpose of private transport and not for the transport of goods or travelers for reward.

(3) A vehicle entering or leaving the Republic qualifies for purposes of the Control Act as a vehicle used as a private means of transport if it is –

- (a) a vehicle excluding a bus, truck or taxi; and
- (b) used by a traveler for the purpose of private transport and not for the transport of goods or travelers for reward.

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<sup>32</sup> Note that these criteria for small vessels, light aircraft and vehicles used as a private means of transport is only significant for purposes of sections 272, 278, 383 and 391 of the Control Act, and are not meant to define the terms for wider purposes. Also note that buses, trucks and taxi's may be cleared through simplified procedures as well.

**Requests for disclosure of private and confidential information** (*section 22 and 23 read with section 903(1)(v)*)

**41.2A** (1) Disclosure of private or confidential information in terms of section 22 or 23 of the Control Act may only take place in accordance with the procedure set out in this rule.

(2) An authorised recipient as contemplated in section 22(1) or a person contemplated in in section 23(3) must when disclosure of private or confidential information is required, direct a request for such disclosure in writing to the Commissioner.

- (3) A request referred to in subrule (2) must –
- (a) be on a letterhead of the relevant authorised recipient, party to the relevant international agreement, or international agency, institution or organization; and
  - (b) reflect –
    - (i) a description of the confidential information required;
    - (ii) the purpose for which the information is required, including the relevant legislation or international agreement;
    - (iii) a confirmation that the information requested will only be used for the purpose as stated in subparagraph (ii); and
    - (iv) in the case of a person contemplated in section 23(3), the name and contact details and designation of that person.

**Requests for other information** (*section 24(2)*)

**41.2B** (1) A person referred to in section 24(2)(a) of the Control Act who wishes to obtain information from the customs authority as contemplated in that section, must request such information in accordance with this rule.

- (2) A request referred to in subrule (1) must be submitted to the customs authority –
- (i) electronically through e-mail; or
  - (ii) by any of the methods contemplated in section 912(2)(a) to (c).



- (3) A request submitted in terms of subrule (2) must –
- (a) be on Form ...as published as a rule on the SARS website; and
  - (b) be submitted by making use of the following details:
    - (i) If sent through e-mail, the e-mail must be directed to the Office of the Commissioner at the e-mail address indicated on the SARS website for receipt of such requests;
    - (ii) if delivered by hand, the request must be delivered to the Office of the Commissioner at 229 Bronkhorst Street, Le Hae La SARS Block A, Nieuw Muckleneuk, Pretoria;
    - (iii) if sent by post, the request must be sent by registered post to the Office of the Commissioner of SARS Private Bag X923, Pretoria, 0001; and
    - (iv) if telefaxed, the fax must be directed to the Office of the Commissioner and sent to the fax number indicated on the SARS website for receipt of such requests.
- (4) A request referred to in subrule (1) must reflect –
- (a) the following information in relation to the person submitting the request:
    - (i) That person's customs code, or if that person does not have a customs code, that person's name, contact details and physical address;
    - (ii) if the person is a –
      - (aa) natural person, that person's identity number or passport number; or
      - (bb) juristic entity, the name of the person authorised to act on behalf of the entity, as well as that person's physical address, contact details, identity or passport number and designation; and
    - (iii) if the application is submitted on behalf of the applicant by an authorised representative, that representative's name and contact details;
  - (b) a description of the information required; and
  - (c) the purpose for which the information is required, and a motivation why the information is required in the public interest.

(5) If a request referred to in subrule (1) is granted by the customs authority, the requested information will be provided upon payment of a fee of R 150.

**Note**

Rules 41.2A, 41.2B will be moved to the Rules under Chapter 1.

***Part 2: Criteria for application of materiality principle (section 903(1)(m))***

**Criteria for determining when interests in goods or businesses are material**  
*(section 903(1)(m)(i))*

**41.3** (1) Whenever it is necessary to determine for purposes of the Control Act or these Rules whether the interest that a person has in goods or a business is a material interest,<sup>33</sup> the interest must be regarded to be a material interest if it –

- (a) consists of an ownership or equity interest in the goods or business exceeding two per cent;
- (b) entitles that person, either directly or indirectly, to take or control final decisions on managing, using, selling or disposing of the goods or business;
- (c) entitles that person, either directly or indirectly, to control at least 30 per cent of the voting power in a juristic entity that has a material interest in the goods or business in terms of paragraph (a) or (b); or
- (d) consists of a close family or business relationship with another person who has a material interest in the goods or business in terms of paragraph (a) or (b).

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<sup>33</sup> See for instance the definition of “private storage warehouse” and sections 10(2)(a), 301, 542(3)(d), 549(3)(d) and 726(a)(ii) of the Control Act.

- (2) For purposes of subrule (1)(d) –
- (a) a close family relationship means a relationship as –
- (i) partners in a marriage or a domestic partnership;
  - (ii) parent and child;
  - (iii) siblings; or
  - (iv) grandparent and grandchild; and
- (b) a close business relationship means a relationship as –
- (i) employer and employee;
  - (ii) directors in the same firm;
  - (iii) director in the other's firm;
  - (iv) director and employee in the same firm;
  - (v) partners in the same firm;
  - (vi) companies in the same group of companies; or
  - (vii) companies directly or indirectly controlled by the same person.

**Criteria for determining when benefits received by persons are material**  
*(section 903(1)(m)(ii))*

**41.4.** Whenever it is necessary to determine for purposes of the Control Act or these Rules whether any particular person has benefitted in a material respect from a breach of the Control Act or these Rules,<sup>34</sup> the person must be regarded to have benefitted from the breach in a material respect if the conduct constituting the breach resulted in that person unjustly –

- (a) gaining a monetary advantage in excess of R5 000; or
- (b) being granted an exemption, authorisation, permission, approval, recognition or other special dispensation in terms of the Control Act.

**Criteria for determining when breaches are material** *(section 903(1)(m)(iii))*

**41.5.** Whenever it is necessary to determine for purposes of the Control Act or these Rules whether the Control Act or these Rules have been breached by a

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<sup>34</sup> See for instance sections 618(3), 657(3) and 679(3) of the Control Act.

person in a material respect,<sup>35</sup> the Control Act or these Rules must be regarded to have been breached in a material respect if the conduct that constituted the breach –

- (a) was an offence for which the perpetrator was sentenced to imprisonment with or without the option of a fine;
- (b) was an offence referred to in section 878(2) or 885 and for which the perpetrator was sentenced to a fine of R5 000 or more;
- (c) was found by a court to have been committed by the perpetrator with the intention to deceive or mislead or to evade tax; or
- (d) resulted in the perpetrator gaining an unjust monetary advantage in excess of R5 000.

**Criteria for determining when information is material for consideration of applications** (*section 903(1)(m)(iv)*)

**41.6.** Whenever it is necessary to determine for purposes of the Control Act or these Rules whether any information is or was material to the consideration or granting of an application by the customs authority in terms of the Control Act or these Rules,<sup>36</sup> that information must be regarded to be or to have been material to the consideration of the application if it deals with any of the following matters:

- (a) The legal status or legal identity of the person whose application is under consideration or has been granted;
- (b) the location of –
  - (i) the main place of business where or from where that person conducts or will conduct business in the Republic;
  - (ii) the premises applied for, if the application relates to premises; or
  - (iii) the place where that person is ordinarily resident in the Republic, if that person is a natural person;
- (c) the solvency or financial soundness of that person;
- (d) that person's record of prudent behaviour, including compliance with customs legislation, or of that of an employee of that person in a managerial position, or, if that person is a juristic entity, of that of a director, administrator or trustee of the juristic entity;

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<sup>35</sup> See for instance sections 610(2)(a), 618(2)(a)(i) and (b)(i), 637(2)(a), 649(a), 657(2)(a)(i) and (2)(b)(i) and 679(2)(a)(i) and (2)(b)(i) of the Control Act.

<sup>36</sup> See for instance sections 610(1)(b)(ii), 637(1)(b)(ii), 670(2)(a)(iii) and 870(1) of the Control Act.

- (e) whether the tax matters of that person are in order;
- (f) the physical security of goods received, stored, handled, processed, transported or in any other way dealt with, managed or controlled by that person following approval of the application;
- (g) the physical facilities, plant, equipment and other infrastructure that will be used for the receipt, storage, handling, processing or transport of such goods;
- (h) the system of record keeping and accountability for such goods; or
- (i) any other matter that is or was of decisive significance in deciding the application.

**Criteria for determining when circumstances were material to granting of applications** (*section 903(1)(m)(v)*)

**41.7.** If any of the circumstances in which an application was approved or a registration, licence or other benefit was granted has changed and it is necessary for purposes of the Control Act or these Rules to determine whether the circumstance that has changed was material to the initial approval of the application or the granting of the benefit,<sup>37</sup> that circumstance must be regarded to have been material if its substance falls within or pertains to any of the following:

- (a) The legal status or legal identity of the person whose application was approved or to whom the registration, licence or other benefit was granted;
- (b) the location of –
  - (i) the main place of business where or from where that person conducts business in the Republic;
  - (ii) the premises that were licensed for the conduct of business; or
  - (iii) place where that person is ordinarily resident in the Republic, if that person is a natural person;
- (c) the solvency or financial soundness of that person;
- (d) that person's record of prudent behaviour, including compliance with customs legislation, or of that of an employee of that person in a managerial position, or, if that person is a juristic entity, of that of a director, administrator or trustee of the juristic entity;
- (e) tax clearance from SARS that the tax matters of that person are in order;

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<sup>37</sup> See for instance sections 623, 654(b), 657(2)(d), 661(1) or (2) and 830(5)(d) of the Control Act.

- (f) the physical security of goods received, stored, handled, processed, transported or in any other way dealt with, managed or controlled by that person in terms of the registration, licence or other benefit;
- (g) the physical facilities, plant, equipment and other infrastructure used for the receipt, storage, handling, processing or transport of goods in terms of the registration, licence or other benefit;
- (h) the system of record keeping and accountability for such goods; or
- (i) any other matter that was of decisive importance, either alone or together with other matters, in approving the application or granting the registration, licence or other benefit.

**Part 3: Applications for purposes of sections 907, 908  
and 909 of Control Act**

**Application for approval of departures from, or for condonation of non-compliance with, rules, conditions or requirements (section 907(3))**

**41.8** (1) An application for approval of a departure from, or condonation of non-compliance with, a rule, condition or requirement referred to in section 907(3) of the Control Act must be submitted to the customs authority –

- (a) electronically through –
  - (i) eFiling; or
  - (ii) e-mail; or
- (b) by any of the methods contemplated in section 912(2)(a) to (c).

(2) An application submitted in terms of subrule (1)(a)(ii) and (b), must –

- (a) be on Form ...as published as a rule on the SARS website; and
- (b) be submitted by making use of the details provided in subrule (3).

(3) Details for submission of an application in terms of subrule (1)(a)(ii) and (b) are the following:

- (a) If sent through e-mail, the e-mail must be directed to the Customs Legislative Policy Division at the e-mail address indicated on the SARS website for receipt of such notifications;

- (b) if delivered by hand, the application must be delivered to the Customs Legislative Policy Division, at 381 Middel Street, First floor Khanyisa, Nieuw Muckleneuk, Pretoria;
- (c) if sent by post, the application must be sent by registered post to the Customs Legislative Policy Division, Private Bag X923, Pretoria, 0001; and
- (d) if telefaxed, the fax must be directed to the Customs Legislative Policy Division and sent to the fax number indicated on the SARS website for receipt of such applications.

(4) An application referred to in subrule (1) must reflect –

- (a) the customs code of the applicant, or if the applicant does not have a customs code, the applicant's name and contact details;
- (b) if the application is submitted on behalf of the applicant by a person authorised to act on behalf of the applicant, that person's name and contact details;
- (c) whether –
  - (i) approval is sought for a departure contemplated in section 907(1)(a), (b) or (c); or
  - (ii) condonation is sought for non-compliance contemplated in section 907(2)(a), (b) or (c);
- (d) the relevant rule, condition or requirement;
- (e) a description of the departure or non-compliance; and
- (f) a motivation of why the circumstances which give rise to the departure, or in which non-compliance occurred, are considered to fall within the definition of "extraordinary circumstances" as set out in section 907(4).

(5) An application referred to in subrule (1) must be accompanied by the following documents –

- (a) in the case of a person submitting the application on behalf of the applicant, an authorization to act on behalf of the applicant;
- (b) any documents that can substantiate the information relied on by the applicant in terms of subrule (4)(e).

**Application for extension of timeframes or periods or postponement of dates**  
(section 908)

**41.9** (1) A person desiring to have a timeframe or period extended or a date postponed in terms of section 908 of the Control Act must apply for such extension or postponement in terms of this rule.

(2) (a) An application referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to paragraph (b) –

(b) If an application referred to in paragraph (a) is submitted to the customs authority in paper format in circumstances where submissions in paper format are permissible,<sup>38</sup> the submission must be –

- (i) on Form ....as published as a rule on the SARS website; and
- (ii) made to the Customs Office as may with reference to section 908(2) be appropriate in the circumstances, or as may be determined or directed by the customs authority in a specific case.

(3) An application referred to in subrule (1) must reflect –

- (a) the customs code of the applicant, or if the applicant does not have a customs code, the applicant's name and contact details;
- (b) if the application is submitted on behalf of the applicant by an authorised representative, that representative's customs code or, if the representative does not have a customs code, the representative's name and contact details;
- (c) the relevant section of the Control Act or rule prescribing the timeframe, period or date which is required to be extended or postponed;
- (d) the extended timeframe or period or postponed date applied for;
- (e) the reason why the extension or postponement is required;
- (f) whether extension of the timeframe or period or postponement of the date applied for is for purposes of –<sup>39</sup>

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<sup>38</sup> See section 913(4) of the Control Act.

<sup>39</sup> Section 908(2) of the Control Act provides the following:

(2) An extension of a timeframe or period or a postponement of a date may be granted or applied in terms of subsection (1)—

- (a) to a specific person or category of persons; or
- (b) in relation to—
  - (i) a specific vessel, aircraft, train, railway carriage or vehicle or category of vessels, aircraft, trains, railway carriages or vehicles;
  - (ii) a specific consignment of goods;



- (i) section 908(2)(a);
  - (ii) section 908(2)(b)(i);
  - (iii) section 908(2)(b)(ii)
  - (iv) section 908(2)(b)(iii)(aa);
  - (v) section 908(2)(b)(iii)(bb);
  - (vi) section 908(2)(b)(iv);
  - (vii) section 908(2)(b)(v);
  - (viii) section 908(2)(b)(vi); or
  - (ix) section 908(2)(b)(vii); and
- (g) all information relevant to the purpose with reference to paragraph (f)(i) to (ix) for which the extension or postponement is required, which will be necessary to enable the customs authority to arrive at a decision concerning the application.

(4) An application referred to in subrule (1) must be accompanied by the following documents:

- (a) In the case of a person submitting the application on behalf of the applicant, an authorisation to act on behalf of the applicant; and
- (b) any documents that can substantiate the information relied on or provided by the applicant in terms of subrule (3)(e) and (g).

(5) An application in terms of this rule must, unless otherwise provided for in these Rules, be submitted prior to the expiry of the timeframe, period or date to which the extension or postponement relates.

### **Applications for shortening minimum timeframes or periods** (*section 909*)

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- (iii) consignments of the same class or kind or other category of goods imported, to be exported, loaded, off-loaded, handled, stored, processed or in any other way dealt with—
    - (aa) by the same person during a specific period; or
    - (bb) at any specific premises during a specific period;
  - (iv) goods of a specific class or kind imported, to be exported, loaded, off-loaded, handled, stored, processed or in any other way dealt with during a specific period;
  - (v) goods loaded, off-loaded, handled, stored, processed or in any other way dealt with at any specific premises;
  - (vi) a specific class or kind or other category of goods or cargo; or
  - (vii) a specific matter to which this Act applies.”.

**41.10 (1)** A person desiring to have a minimum timeframe or period shortened in terms of section 909 of the Control Act must apply for such shortening in terms of this rule.

(2) (a) An application referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to paragraph (b).

(b) If an application referred to in paragraph (a) is submitted to the customs authority in paper format in circumstances where submissions in paper format are permissible,<sup>40</sup> the submission must be –

- (i) on Form ...as published as a rule on the SARS website; and
- (ii) made to the Customs Office as may with reference to section 909(2) be appropriate in the circumstances, or as may be determined or directed by the customs authority in a specific case.

(3) An application in terms of subrule (1) must reflect –

- (a) the customs code of the applicant, or if the applicant does not have a customs code, the applicant's name and contact details;
- (b) if the application is submitted on behalf of the applicant by an authorised representative, that representative's customs code or, if the representative does not have a customs code, the representative's name and contact details;
- (c) the relevant section of the Control Act or rule prescribing the timeframe or period which is required to be shortened;
- (d) the shortened timeframe or period applied for;
- (e) the reason why shortening of the timeframe or period is required;
- (f) whether shortening of the timeframe or period applied for is for purposes of -<sup>41</sup>

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<sup>40</sup> See section 913(4) of the Control Act.

<sup>41</sup> Note that section 909(2) of the Control Act provides as follows:

“(2) A shortening of a minimum timeframe or period may be granted or applied in terms of subsection (1)—

- (a) to a specific person or category of persons; or
- (b) in relation to—
  - (i) a specific vessel, aircraft, train, railway carriage or vehicle or category of vessels, aircraft, trains, railway carriages or vehicles;
  - (ii) a specific consignment of goods;
  - (iii) consignments of the same class or kind or other category of goods imported, to be exported, loaded, off-loaded, handled, stored, processed or in any other way dealt with—
    - (aa) by the same person during a specific period; or
    - (bb) at any specific premises during a specific period;

- (i) section 909(2)(a);
  - (ii) section 909(2)(b)(i);
  - (iii) section 909(2)(b)(ii);
  - (iv) section 909(2)(b)(iii)(aa);
  - (v) section 909(2)(b)(iii)(bb);
  - (vi) section 909(2)(b)(iv); or
  - (vii) section 909(2)(b)(v); and
- (g) all information relevant to the purpose with reference to paragraph (f)(i) to (vii) for which shortening of the timeframe or period is required, which will be necessary to enable the customs authority to arrive at a decision concerning the application.

(4) An application referred to in subrule (1) must be accompanied by the following documents:

- (a) In the case of a person submitting the application on behalf of the applicant, an authorisation to act on behalf of the applicant; and
- (b) any documents that can substantiate the information relied on or provided by the applicant in terms of subrule (3)(e) and (g).

(5) An application in terms of this rule must, unless otherwise provided for in these Rules, be submitted prior to the expiry of the timeframe or period for which the shortening is required.

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- (iv) goods of a specific kind imported, to be exported, loaded, off-loaded, handled, stored, processed or in any other way dealt with during a specific period; or
  - (v) goods loaded, off-loaded, handled, stored, processed or in any other way dealt with at any specific premises.”.

#### **Part 4: Electronic communication**

##### **Communicative systems administered by SARS (rule 903(1)(b))**

**41.11** SARS administers the following electronic communicative systems for purposes of implementing the Control Act in relation to the submission of documents:

- (a) EDI , for the submission of the following documents that must be submitted electronically to the customs authority in terms of Chapter 3 of the Control Act:
  - (i) Advance loading, arrival and departure notices;
  - (ii) arrival and departure reports;
  - (iii) manifests of inbound and outbound cargo;
  - (iv) updates of advance notices; and
  - (v) outturn reports;
- (b) EDI or eFiling, for the submission of all other documents that may or must be submitted electronically to the customs authority in terms of the Control Act and that can be submitted through EDI or eFiling; and
- (c) any other software applications available on the SARS website for the delivery of documents such as supporting documents.

##### **General conditions and requirements for electronic communication with customs authority (sections 903(1)(b),(q) and (r) and 913)**

**41.12** (1) Accessing a computer system referred to in rule **41.11** is subject to the following conditions:

- (a) A person desiring or required to access and use such a computer system for purposes of communicating electronically with the customs authority, either for own business or as a representative on behalf of another person, must –
  - (i) be registered as an electronic user in terms of section 606 of the Control Act for the specific computer system;
  - (ii) enter into an electronic user agreement with the Commissioner for the specific computer system as published on the SARS website or available on eFiling; and
  - (iii) access and use the applicable computer system in accordance with this Part and the applicable electronic user agreement.

- (b) A person using a representative for purposes of communicating electronically with the customs authority through EDI, must be registered as an electronic user in terms of section 606 of the Control Act.
- (d) A registered electronic user installing any software for purposes of electronic communication with the customs authority through such a computer system, must install the software at own cost except where SARS provides it free of charge.

### **Digital signatures and conditions and requirements applicable to digital signatures for EDI**

**41.13** (1) A person communicating with the customs authority through EDI must have a digital signature allocated by the customs authority.

(2) When registering a person as an EDI electronic user, a digital signature must be allocated—

- (a) if the user is a natural person, to the user and to each employee of the user nominated in the user agreement as a person authorised to communicate with the customs authority on behalf of the user; or
- (b) if the user is a juristic entity, to each official or employee of the entity nominated in the user agreement as a person authorised to communicate the customs authority on behalf of the entity.

(3) The digital signature must be used by a registered electronic user in relation to the electronic submission of documents that are in terms of the Control Act required to be signed.

(4) A valid digital signature linked or attached to an electronic communication and communicated to the customs authority in accordance with this Part must for all purposes be regarded to be the registered electronic user's hand signature.

### **When electronic communications must be attributed to registered electronic users**

**41.14** An electronic communication or document submitted to the customs authority must be attributed to have been generated or transmitted by a registered electronic user if it was generated or transmitted by —

- (a) the user;
- (b) an official or employee of the user authorised in the user agreement to generate or transmit electronic messages on behalf of the user;
- (c) a representative authorised to generate or transmit electronic messages on behalf of the user; or
- (d) a computer system programmed by or on behalf of the user to generate or transmit electronic messages automatically.

**Reporting of security breaches in relation to electronic transmissions** (*section 903(1)(r)(iv)*)

**41.15** (1) A registered electronic user must upon becoming aware of any security breach in relation electronic transmissions to the customs authority, notify the customs authority of the breach.

(2) A notification referred to in subrule (1) must be submitted to the customs authority electronically through eFiling.

- (3) A notification referred to in subrule (1) must reflect –
- (a) the customs code of the electronic user; and
  - (b) particulars of the breach in security, including –
    - (i) an explanation of what caused the breach;<sup>42</sup>
    - (ii) the circumstances in, and date on which the breach occurred, if known; and
    - (iii) the impact of the breach on electronic communications with the customs authority;
  - (c) measures taken to contain or mitigate the risk associated with the breach; and
  - (d) whether the measures referred to in paragraph (c) had resolved the breach or not.

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<sup>42</sup> I.e whether the breach was due to hardware or software failure, computer hacking, theft etc.

## **Electronic communication through computer systems administered by SARS**

*(section 903(1)(q) and (r))*

**41.16** (1) The rules published by Government Notice No. 644 dated 25 August 2014, excluding rule 5 thereof, apply for purposes of electronic communication between registered electronic users and the customs authority through a computer system referred to in rule **41.11**, subject to subrule (2).

(2) The rules referred to in subrule (1) apply with any necessary changes as the context may require, and in such application any reference in those rules to –

- (a) a tax Act must be read as including a reference to the Control Act;
- (b) an electronic filing system must be read as including a reference to a computer system referred to in rule **41.11**;
- (c) an electronic filing transaction must be read as including a reference to an electronic communication required or permitted in terms of the Control Act or these Rules;
- (d) an electronic communicator or registered electronic user must be read as including a reference to a person registered in terms of the Control Act as an electronic user;
- (e) an electronic signature must in the case of electronic communication through EDI be read as including a reference to a digital signature as defined in rule **41.1**;
- (f) a registered tax practitioner must be read as including a reference to a person registered in terms of the Control Act as an electronic user and who communicates electronically with the customs authority as an authorised representative on behalf of another; and
- (g) a taxpayer must be read as including a reference to a licensee or a person registered for any purpose in terms of the Control Act.

(3) In the event of any inconsistency between a provision of these Rules and the rules referred to in subrule (1), the provision of these Rules prevail.

## **Offences**

**41.17** A person is guilty of a Category 1 offence if that person uses in any electronic communication to the Commissioner, the customs authority or a customs officer a digital signature allocated to any other person without that other person's consent.

### ***Part 5: Record keeping systems (section 919)***

#### **Record keeping systems to comply with this Part (sections 903(1)(g) and 919)**

**41.18** A record keeping system that a person must use in terms of section 919 of the Control Act, whether computer-based or paper-based, must be in accordance with and subject to the conditions and requirements contained in this Part.<sup>43</sup>

#### **Minimum requirements for record keeping systems**

**41.19** (1) The computer- or paper-based system used for the keeping or retention of records must as a minimum enable the person required to keep record to obtain, without undue delay, access to the information and documents in the system, including to information and documents pertaining to specific goods and specific transactions stipulated by the customs authority.

(2) If a computer-based system is used, electronic records must be kept and retained in an acceptable electronic form.

(3) For purposes of subrule (2), electronic records are in an acceptable electronic form if—

- (a) the integrity of the electronic records satisfies the standard contained in section 14(1)(a) and section 14(2) of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);
- (b) the person keeping or retaining those records can without undue delay furnish the customs authority with –

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<sup>43</sup> The persons who are required to keep record and the information and documents to be kept record of are set out in specific provisions of the Control Act and the rules under the different chapters.



- (i) an electronic copy or extract of any of those records in a format that can be accessed, read and correctly analysed by a computer programme used by the customs authority, should the customs authority or a customs officer request such a copy or extract; or
  - (ii) a paper-based copy or extract of any of those records, should the customs authority or a customs officer request such a copy or extract; and
- (c) the customs authority or a customs officer can access such records for the purpose of performing an enforcement function.<sup>44</sup>

(3) The onus to establish which programmes the customs authority uses for purposes of subrule (2)(b)(i) is on the person keeping or retaining the electronic records.

### **Measures to assist understanding of computer-based systems**

**41.20** (1) A person keeping or retaining records by means of a computer-based system must –

- (a) prepare and keep a paper-based explanatory guide that accurately describes that person's computer-based system and how to access and understand that person's method of keeping or retaining electronic records; and
- (b) make the explanatory guide available to the customs authority on request.

(2) The explanatory guide must include an explanation of the following:

- (a) How transactions are created, processed and stored;
- (b) which reports are generated and how such reports are generated;
- (c) how often electronic records are stored;
- (d) the format used to store and archive the records, including a description of the media, software and hardware used;
- (e) the locality where records are stored or archived, or from where records can be accessed;
- (f) a data dictionary that explains how records are indexed when created, processed, stored or backed-up; and

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<sup>44</sup> See definition of "enforcement function" in section 1 of the Control Act.

- (g) the procedures and protocols in place to prevent the unauthorised deletion, alteration or destruction of records.

(3) If an electronic record consists of any non-electronic record converted to an electronic form, or of any existing electronic record converted to another electronic form, a separate record must be kept of the following:

- (a) A chronological record and explanation of all changes or upgrades to the software and hardware used, including explanations of how the new system can recreate an acceptable electronic form referred to in rule **41.19(3)**;
- (b) where applicable, explanations of migrations of data that may have taken place across either software or hardware;
- (c) a detailed record of the controls which maintain the integrity of the old system together with a record of the records processed to an electronic or another electronic format as applicable; and
- (d) an explanation of archival and back-up facilities under any obsolete or old electronic systems used.

(4) If a person carries out internet-based transactions, the explanatory guide referred to in subrule (1) and a record referred to in subrule (3) must also contain a description of—

- (a) the web-log created to identify individual transactions; and
- (b) the security measures used to maintain the identity and authenticity of transactions.

### **Location of records**

**41.21** (1) Records must, subject rule **41.23**, be kept and retained at a fixed physical address in the Republic which –

- (a) in the case of records kept by a licensee in connection with activities and goods on any licensed premises, must be the licensed premises;<sup>45</sup>
- (b) in the case of records kept by a person registered or licensed for a business or activity, must be the premises occupied by that person for the purposes of the business or activity for which that person is registered or licensed;<sup>46</sup>

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<sup>45</sup> Customs has in terms of section 709(1)(a) of the Control Act access to these premises without a warrant.

- (c) in the case of records kept by the licensee of any licensed cross-border transmission line, pipeline, cable-car or conveyor belt, must be the premises occupied by the licensee for the purposes of the business or activity for which the transmission line, pipeline, cable-car or conveyor belt is licensed; or
- (d) in the case of records kept by a person referred to in section 116 of the Control Act, must be the premises occupied by that person or licensee for the purpose of the business or activity for which that person is registered or licensed.

(2) Records kept in terms of subrule (1) at premises referred to in that subrule may with the permission of the customs authority be moved to and kept at any other premises in the Republic, provided that such permission may be applied for only after the expiry of a period of twelve months –

- (a) in the case of records relating to imported goods cleared for home use, since the goods have unconditionally been released for home use;
- (b) in the case of records relating to goods under a customs procedure, since the customs procedure has been completed;<sup>47</sup> and
- (c) in the case of records relating to the transport of goods otherwise than under a customs procedure, since the goods were delivered at the destination.

(3) A permission granted in terms of subrule (2) is subject to –

- (a) the condition that the owner or person in physical control of the premises where the records will be kept must provide a standing consent for purposes of section 709(3)(a) to warrantless entry of the premises by customs officers at any reasonable time for accessing and inspecting those records; and
- (b) any other conditions as the customs authority may impose in terms of section 918.

(4) Records must be kept or retained in a secure place on the premises where it must be kept or retained in terms of subrule (1) or (2).

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<sup>46</sup> Customs has in terms of section 709(3)(b) of the Control Act access to these premises without a warrant.

<sup>47</sup> See section 109 of the Control Act and the Chapters on the various customs procedures for the time when a customs procedure is completed.

**Application for permission to move and keep records elsewhere than at premises prescribed in rule 41.21**

**41.22** (1) (a) An application for permission referred to in rule **41.21**(2) must be submitted to the customs authority electronically through eFiling, subject to paragraph (b).

(b) If an application referred to in paragraph (a) is submitted to the customs authority in paper format in circumstances where submissions in paper format are permissible,<sup>48</sup> the submission must be –

- (i) on Form ...as published as a rule on the SARS website; and
- (ii) made to the Customs Office designated by the Commissioner in terms of section 14 of the Control Act to receive applications for licensing and registration.

(2) An application referred to in subrule (1) must reflect –

- (a) the applicant's customs code;
- (b) if the applicant is –
  - (i) a natural person, the applicant's identity number or passport number; or
  - (ii) a juristic entity, the name of the person authorised to act on behalf of the entity, as well as that person's physical address, contact details, identity or passport number and designation or capacity; and
- (c) if the application is submitted on behalf of the applicant by a representative, also the name, physical address and contact details of the representative;
- (d) a description of the records to which the application relates, including whether the records are kept electronically or in paper format;
- (e) the current location of the records;
- (f) the physical address of premises where the records are to be moved to and kept;
- (g) the name and contact details of the person in control of the premises referred to in (f);

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<sup>48</sup> See section 913(4) of the Control Act.

- (h) a statement that–
  - (i) the records have been kept at the premises referred to in rule **41.21(1)** for the prescribed time with reference to the relevant requirements in paragraphs (a) to (c) of that subrule;
  - (ii) the owner or person in physical control of the premises where the records are to be moved to and kept has given a standing consent referred to in rule **41.21(3)**; and
  - (iii) any login codes, keys or passwords necessary for the customs authority to access electronic records will be available as required in terms of rule **41.27**, if the application is granted; and
- (i) a motivation of the need to keep the records at the premises referred to in paragraph (f).

(3) An application referred to in subrule (1) must be accompanied by the following supporting documents:

- (a) a standing consent by the owner or person in physical control of the premises where the records are to be moved to and kept referred to in rule **41.21(3)**;
- (b) if the application is submitted on behalf of the applicant by a representative, a document authorising that person to act as representative; and
- (c) any other document that may support the information provided by the applicant in the application.

(4) The customs authority may request any further relevant documentation necessary to consider the application and the applicant must submit such documentation within the timeframe indicated by the customs authority in the request.

### **Keeping of electronic records outside Republic**

**41.23** A person may with the permission of the customs authority keep or retain electronic records at a location outside the Republic, provided –

- (a) those electronic records are accessible from a computer-based system on the premises referred to in rule **41.21(1)** or (2) where the records would otherwise have to be kept or retained;

- (b) the locality where the records are proposed to be kept or retained will not obstruct that person's access to those records;
- (c) there is an international agreement in place between the Republic and the country in which that person proposes to keep those records, which will facilitate the customs authority in obtaining information from or through the government of that country on any matter concerning those records;
- (d) keeping or retaining the records at a location outside the Republic will not compromise compliance with rule **41.19**; and
- (e) such permission may be applied for only after the expiry of a period of twelve months –
  - (i) in the case of records relating to imported goods cleared for home use, since the goods have unconditionally been released for home use;
  - (ii) in the case of records relating to goods under a customs procedure, since the customs procedure has been completed;<sup>49</sup> and
  - (iii) in the case of records relating to the transport of goods otherwise than under a customs procedure, since the goods were delivered at the destination.

#### **Application to keep electronic records at places outside Republic**

**41.24 (1) (a)** A person who wishes to obtain permission contemplated in rule **41.23** to keep or retain electronic records at a location outside the Republic must submit an application for such permission to the customs authority electronically through eFiling, subject to paragraph (b).

(b) If an application referred to in paragraph (a) is submitted to the customs authority in paper format in circumstances where submissions in paper format are permissible,<sup>50</sup> the submission must be–

- (i) on Form ...as published as a rule on the SARS website; and
- (ii) made to the Customs Office designated by the Commissioner in terms of section 14 of the Control Act to receive applications for licensing and registration.

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<sup>49</sup> See section 109 of the Control Act and the Chapters on the various customs procedures for the time when a customs procedure is completed.

<sup>50</sup> See section 913(4) of the Control Act.

- (2) An application referred to in subrule (1) must reflect –
- (a) the applicant's customs code;
  - (b) if the applicant is –
    - (i) a natural person, the applicant's identity number or passport number; or
    - (ii) a juristic entity, the name of the person authorised to act on behalf of the entity, as well as that person's physical address, contact details, identity or passport number and designation or capacity; and
  - (c) if the application is submitted on behalf of the applicant by a representative, also the name, physical address and contact details of the representative;
  - (d) a description of the electronic records to which the application relates;
  - (e) the current location of the electronic records;
  - (f) details relating to the locality where the electronic records are proposed to be kept or retained outside of the Republic, including –
    - (i) the physical address; and
    - (ii) the name of a contact person and that person's contact details;
  - (g) the name of the computer software or electronic platform to be used by the applicant for the storage of the records;
  - (h) a motivation of the need to keep the records at the premises referred to in paragraph (f); and
  - (i) a statement that rule **41.23** will be complied with, specifically stating –
    - (i) the physical address of the premises from where the records will be accessible with reference to rule **41.21**(1) or (2);
    - (ii) that the locality where the records will be kept or retained will not obstruct the applicant's access to those records;
    - (iii) particulars of the relevant international agreement that will facilitate the customs authority in obtaining information from or through the government of the country in which the records will be kept or retained on any matter concerning those records;
    - (iv) that keeping or retaining the records at that location outside the Republic will not compromise compliance with rule **41.19**; and
    - (v) that any login codes, keys or passwords necessary for the customs authority to access electronic records will be available as required in terms of rule **41.27**, if the application is granted.

(3) An application referred to in subrule (1) must be accompanied by the following documents:

- (a) If the application is submitted on behalf of the applicant by a representative, a document authorising that person to act as representative;
- (c) an extract of the applicant's electronic records as contemplated in rule **41.19(3)(b)(i)**; and
- (c) any other document that may support the information provided by the applicant in the application.

(4) The customs authority may request any further relevant documentation necessary to consider the application and the applicant must submit such documentation within the timeframe indicated by the customs authority in the request.

#### **Period and manner of retention of records**

**41.25** (1) A document or information that must be kept record of must be retained for a period of at least five years calculated from the end of the calendar year in which the transaction or activity to which the document or information relates was concluded or has occurred.

(2) If those records are retained by means of a computer-based system, the person who keeps the records must ensure that there is adequate storage capacity in the system for the duration of the period referred to in subrule (1), which includes—

- (a) the storage of the electronic records in a manner that is appropriate to the media used by the person;
- (b) the storage of all electronic signatures, keys and certificates where these are held; and
- (c) the storage of recovery procedure to decrypt electronic records that are encrypted.



### **Outsourcing of record keeping functions**

**41.26** If a person required to keep record of any information or documents procures a service provider to manage on that person's behalf that person's record keeping system, or any aspect of that system, that person –

- (a) is not relieved of responsibility to comply with this Part only because that person has procured a service provider to manage that system or aspect of that system; and
- (b) is liable for any breach of this Part by the service provider as if that person has committed the breach.

### **Inspection of records**

**41.27** (1) A person who keeps or retains records must allow a customs officer to inspect those records at any reasonable time on the premises –

- (a) where the records are kept or retained; or
- (b) from where those records are accessible, in the case of electronic records kept outside the Republic in terms of rule **41.23**.

(2) In the course of an inspection, the computer system used by the person who keeps or retains records in an electronic format, must be capable of demonstrating positively that the provisions of this Part are complied with, including validating that—

- (a) the electronic records meet the standard of integrity referred to in rule **41.19(3)(a)**; and
- (b) rule **41.19(3)(b)** and (c) can be complied with.

(3) Any login codes, keys or passwords required to access the electronic records must be available at all reasonable times to enable an inspection of the records to be carried out.

(4) The explanatory guide referred to in rule **41.20(1)** must be available at all reasonable times to enable an inspection of the records to be carried out.

(5) A person's electronic records must be capable of being copied to storage media required by the customs authority, if an electronic record, or part of an electronic record, is required to be produced or submitted.

#### **Making electronic records available for audit**

**41.28** (1) Electronic records must be able to be made available for the purpose of an audit in terms of the Control Act, which includes having the following available on the date and at the time that an audit is scheduled to start:

- (a) Any login codes, keys or passwords required to access the electronic records for the purpose of an audit;
- (b) the explanatory guide and records referred to in rule **41.20**; and
- (c) any computer and software manuals that are relevant to accessing and understanding the relevant computer system.

#### **Transitional provision relating to records kept in terms of Customs and Excise Act**

**41.29** This Part, does not apply to the retention of records kept in terms of the Customs and Excise Act up to the effective date as defined in section 926 of the Control Act, and such records must be retained after that date as if the Customs and Excise Act has not been amended by the Customs and Excise Amendment Act, 2014.

**Part 6: Submission of documents and communications through representatives (section 920)**

**Requirements for submission of documents and communications through representatives<sup>51</sup>**

**41.30.** (1) When a person in terms of section 920 of the Control Act makes use of a representative to submit a declaration, report, statement, return, notice, notification, application, request or other document or communication to the Commissioner, the customs authority or a customs officer –

- (a) the representative appointed by the principal may act on behalf of the principal only in accordance with a written authorisation setting out the representative's mandate and terms of appointment; and
- (b) the document or communication must be signed by the principal if the Control Act or these Rules require the document or communication to be signed by the person who may or must submit the document or communication.

(2) If a document or communication is submitted through EDI or eFiling by an authorised representative on behalf of a principal, a requirement that the document or communication must be signed by the principal, as contemplated in subrule (1)(b), must for all purposes regarded to have been complied with if submission of the document or communication by the representative is in accordance with the requirements of Part 4.

(3) Any submission of a document or communication by a representative on behalf of a principal must be supported by the written authorisation referred to in subrule (1)(a).

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<sup>51</sup> Note that although section 920 is an enabling provision that applies generally to the submission of documents to Customs, its application is subject to the other provisions of the Control Act. This means that where the Act contains specific provisions on the submission of documents, the specific provisions will override section 920 to the extent of any inconsistency. For instance, section 165 specifically limits the persons entitled to submit clearance declarations, and this provision will accordingly override the general wording of section 920 and disallow a representative who is not a licensed customs broker or another authorised person contemplated in that section to submit clearance declarations.

## **Liability of principals for submission of documents and communications through representatives**

**41.31.** When a person in terms of section 920 of the Control Act authorises a representative to submit a declaration, report, statement, return, notice, notification, application, request or other document or communication to the Commissioner, the customs authority or a customs officer, the principal –

- (a) is not absolved from liability for any breach of the Control Act committed by the representative merely because the principal did not actually commit that breach; and
- (b) is liable as if that breach was committed by the principal.

## **Exclusions**

**41.32.** This Part does not apply to customs brokers and registered agents submitting a declaration, report, statement, return, notice, notification, application, request or other document or communication to the Commissioner, the customs authority or a customs officer on behalf of their clients.<sup>52</sup>

## **Contents of written authorisations to representatives**

**41.33. (1)** An authorisation referred to in rule **41.30(1)(a)** must contain –

- (a) the following information in relation to the principal:
  - (i) The principal's customs code; or
  - (ii) if the principal does not have a customs code, the principal's name, ID number,<sup>53</sup> contact details, postal and physical address;
- (b) the following information in relation to the representative:
  - (i) The representative's name, ID number,<sup>54</sup> contact details, postal and physical address; and
  - (ii) designation;
- (c) particulars of the representative's mandate and terms of appointment;
- (d) the reason why the principal elects to make use of a representative; and

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<sup>52</sup> As customs brokers and registered agents are specifically regulated in terms of the Control Act, they operate in accordance with those specific provisions of the Act applicable to them when submitting documents and communications on behalf of their clients. Also note that customs brokers and registered agents are in terms of rules **28.8(2)(b)** and **29.9(2)(b)** not allowed to submit registration and licence applications on behalf of other persons.

<sup>53</sup> In the case of a natural person.

<sup>54</sup> In the case of a natural person.

(g) the signatures of the principal and two witnesses and the date and place of signature.

(2) An authorisation must –

(a) support any submission by the authorised representative of a communication or document to the Commissioner, the customs authority or a customs officer in terms of the Control Act or these Rules; and

(b) be submitted to the customs authority where such submission is required in terms of the Control Act or these Rules or by the customs authority.

### **Short title and commencement**

**41.34** These Rules are called the Customs Control Rules and take effect on the effective date as defined in section 926 of the Control Act.

Draft

<b>Chapter</b>	<b>Section</b>	<b>Category</b>	<b>Penalty</b>	<b>Description of breach</b>
Chapter 2	Section 41(2)	Category D	R10 000	Failure to move goods to the relevant terminal as required by section 41(2).
Chapter 3	Section 49(1)(a), (b) & (c)	Category C	R7 500	Failure to submit advance arrival notice within applicable timeframe.
Chapter 3	Section 49(2)(a) & (b)	Category C	R7 500	Failure to submit advance arrival notice within applicable timeframe.
Chapter 3	Section 50(1) & (2)	Category C	R7 500	Failure to submit arrival report within applicable timeframe.
Chapter 3	Section 51(1)(a) & (b)	Category C	R7 500	Failure to submit advance departure notice within applicable timeframe.
Chapter 3	Section 51(2)(a) & (b)	Category C	R7 500	Failure to submit advance cargo departure notice within applicable timeframe.
Chapter 3	Section 52(1)	Category C	R7 500	Departure without customs authority's permission.
Chapter 3	Section 53(1)(b) & (2)	Category C	R7 500	Failure to submit required departure report within applicable timeframe.
Chapter 3	Section 55(1)(a) & (b)	Category C	R7 500	Failure to submit advance arrival notice within applicable timeframe.
Chapter 3	Section 55(2)(a) & (b)	Category C	R7 500	Failure to submit advance arrival notice within applicable timeframe.
Chapter 3	Section 56(1)(b) & (2)	Category C	R7 500	Failure to submit arrival report within applicable timeframe.
Chapter 3	Section 57(1)(a) & (b)	Category C	R7 500	Failure to submit advance departure notice within applicable timeframe.
Chapter 3	Section 57(2)(a) & (b)	Category C	R7 500	Failure to submit advance cargo departure notice within applicable timeframe.
Chapter 3	Section 58(1)	Category C	R7 500	Departure without customs authority's permission.
Chapter 3	Section 59(1)(b) & (2)	Category C	R7 500	Failure to submit departure report within applicable timeframe.
Chapter 3	Section 60(1) & (2)	Category C	R7 500	Failure to submit advance arrival notice within applicable timeframe.
Chapter 3	Section 61(1) & (2)	Category C	R7 500	Failure to submit arrival report within applicable timeframe.
Chapter 3	Section 62(1) & (2)	Category C	R7 500	Failure to submit advance departure notice within applicable

Chapter	Section	Category	Penalty	Description of breach
				timeframe.
Chapter 3	Section 63(1) & (2)	Category C	R7 500	Failure to submit departure report within applicable timeframe.
Chapter 3	Section 64(1) & (2)	Category C	R7 500	Failure to submit advance arrival notice within applicable timeframe.
Chapter 3	Section 65(1)	Category C	R7 500	Failure to submit arrival report within applicable timeframe.
Chapter 3	Section 66(1) & (2)	Category C	R7 500	Failure to submit advance departure notice within applicable timeframe.
Chapter 3	Section 67(1)	Category C	R7 500	Failure to submit departure report within applicable timeframe.
Chapter 3	Section 68(1) & (2)	Category C	R7 500	Failure to submit advance arrival notice within applicable timeframe.
Chapter 3	Section 69(1)	Category C	R7 500	Failure to submit arrival report upon entry into Republic
Chapter 3	Section 70(1)	Category C	R7 500	Failure to submit advance departure notice within applicable timeframe.
Chapter 3	Section 71(1)	Category C	R7 500	Failure to submit departure report and manifest of outgoing cargo.
Chapter 3	Section 73(1) or (2)	Category C	R7 500	Failure to submit required outturn report within applicable timeframe.
Chapter 3	Section 74(1) or (2)	Category C	R7 500	Failure to submit required outturn report within applicable timeframe.
Chapter 3	Section 75(1)	Category C	R7 500	Failure to submit required outturn report within applicable timeframe.
Chapter 3	Section 75(2)	Category C	R7 500	Failure to submit required outturn report within applicable timeframe.
Chapter 3	Section 76(1)	Category C	R7 500	Failure to submit required outturn report within applicable timeframe.
Chapter 3	Section 76(3)	Category C	R7 500	Failure to submit required notice within applicable timeframe.
Chapter 3	Section 77	Category C	R7 500	Failure to submit required outturn report within applicable timeframe.

Chapter	Section	Category	Penalty	Description of breach
Chapter 3	Section 78(1)	Category C	R7 500	Failure to submit required outturn report within applicable timeframe.
Chapter 3	Section 78(3)	Category C	R7 500	Failure to submit required notice within applicable timeframe.
Chapter 3	Section 80	Category C	R7 500	Failure to submit required report within applicable timeframe.
Chapter 3	Section 83	Category C	R7 500	Failure to comply with unpacking requirements.
Chapter 3	Section 84 (1) & (2)	Category B	R5 000	Failure to submit required notice, report, manifest or outturn report in accordance with applicable requirements.
Chapter 4	Section 93(3)	Category B	R5 000	Failure to clear goods for export as contemplated in section 93(3).
Chapter 4	Section 108(2)	Category D	R10 000	Dealing with goods under customs procedure otherwise than in accordance with that procedure or any applicable conditions.
Chapter 5	Section 125(1)	Category B	R5 000	Failure to promptly report breakdown, accident or unforeseen event occurring in the course of transporting goods.
Chapter 5	Section 125(2)	Category C	R7 500	Failure to comply with direction of customs authority.
Chapter 5	Section 126(1)	Category B	R5 000	Failure to comply with specified sealing and security requirements.
Chapter 7	Section 163, read with section 167		1 <sup>st</sup> Breach: Warning 2 <sup>nd</sup> Breach: R2500	Submission of clearance declaration not containing all required particulars without resultant under-declaration of duties or taxes.
Chapter 7	Section 168(2)		1 <sup>st</sup> Breach: Warning 2 <sup>nd</sup> Breach: R2500	Failure to comply with applicable requirements for manual submission of clearance declarations.
Chapter 7	Section 177(1)	Category B	R5 000	Invoice supporting clearance declaration not meeting specified requirements.
Chapter 7	Section 178(1)	Category C	R 7 500	Failure to amend invoice when amendment is required.
Chapter 7	Section 178(4)	Category B	R 5000	Failure to motivate reasons for amendment.
Chapter 7	Section 182	Category C	R 7 500	Failure to submit return message.
Chapter 10	Section 234	Category D	R 10 000	Non-compliance with multi-modal transport requirements.
Chapter 11	Section 255(1) or (2)	Category C	R 7 500	Failure to commence or complete transshipment operation within applicable timeframe.



Chapter	Section	Category	Penalty	Description of breach
Chapter 11	Section 259(4)	Category C	R 7 500	Failure to provide on request to customs authority proof that transhipped goods were exported.
Chapter 12	Section 288(3)	Category A	R 1 500	Failure to produce a CPD or ATA carnet at place of exit.
Chapter 13	Section 304(2)(a) or (b)	Category C	R 7 500	Failure to notify customs authority of delivery or receipt of goods.
Chapter 13	Section 307	Category D	R 10 000	Failure to keep record of warehoused goods.
Chapter 15	Section 346(1) & (2)	Category A	R 2 500	Failure to report stores on board foreign-going vessel, aircraft or train.
Chapter 15	Section 350(2)	Category D	R 10 000	Impermissible clearance of goods under stores procedure for transshipment or international transit.
Chapter 15	Section 350(4)	Category A	R 2 500	Fails to return stores within applicable timeframe.
Chapter 15	Section 354(2)	Category A	R 2 500	Failure to submit stores departure report.
Chapter 18	Section 415(1)(a)	Category D	R 10 000	Failure to deliver goods cleared for inward processing to premises where processing will occur or other authorised premises.
Chapter 18	Section 428(1)(a)	Category C	R 7 500	Appointment of unlicensed subcontractor without customs authority's approval.
Chapter 19	Section 442(2)(a)	Category D	R 10 000	Delivery of goods without customs authority's permission to premises other than licensed home use processing premises or other authorised premises.
Chapter 19	Section 444(1)	Category B	R 5 000	Failure to complete processing of goods within applicable timeframe.
Chapter 19	Section 449(1)(a)	Category C	R 7 500	Appointment of unlicensed subcontractor without customs authority's approval.
Chapter 20	Section 465(1)	Category B	R 5 000	Failure to clear compensating products within applicable timeframe.
Chapter 20	Section 469(1)	Category C	R 7 500	Failure to use approved conversion rate.
Chapter 23	Section 514(1)(a)	Category A	R 2 500	Failure to include samples under clearance of goods for home use.
Chapter 27	Section 580(6)(a) or (b)	Category B	R 5 000	Failure to submit delivery or receipt notice.