
GOVERNMENT NOTICE

MINISTRY OF FINANCE

No.

2022

**RULES FOR THE LICENSING OF CLEARING AGENTS UNDER CUSTOMS AND
EXCISE ACT, 1998**

Under sections 73(2) and 130(2) of the Customs and Excise Act, 1998 (Act No. 20 of 1998), I have –

- (a) made the rules for the licensing of clearing agents as set out in the Schedule; and
- (b) determined that the said rules come into operation on 1 April 2022.

**EXECUTIVE DIRECTOR
MINISTRY OF FINANCE**

Windhoek, 1 April 2022

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Form 73 F (rule 14(1)): ASYCUDAWorld registration form

Form 73 G (rule 15(2)): application for renewal of clearing agent license

Definitions

1. In these Rules, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Customs and Excise Act, 1998 has that meaning and

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“Act” means the Customs and Excise Act, 1998 (Act No. 20 of 1998);

“assessed declaration” means a declaration submitted electronically on any version of the ASYCUDA World System for acceptance to the Namibia Revenue Agency in which the declarant acknowledges the payable duties indicated as correct and exact;

“ASYCUDA World System” means the Automated System for Customs Data (ASYCUDA) System which is a computerized customs management system which handles manifest and customs declarations, accounting procedures, transit & suspense procedures and generate trade data that can be used for statistical economic analysis;

“banking institution” means a banking institution defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998);

“Business Intellectual Property Authority” means the Business and Intellectual Property Authority established in terms of section 3 of the Business and Intellectual Property Authority Act, 2016 (Act No. 8 of 2016),

“clearing agent” means a person licensed by the Commissioner of the Namibia Revenue Agency in terms of these Rules, for the purpose of section 40 of the Act, to make an entry or to deliver a bill of entry relating to any goods, for reward, on behalf of any importer or exporter of goods;

“clearing clerk” means a natural person who underwent the training referred to in rule 9 and/or who attained a seventy (70) per cent grade or higher in the proficiency test referred to in rule 8 and who is given the responsibility to act on behalf of a licensed clearing agent;

“Commissioner” means the Commissioner appointed in terms of section 18 of the Namibia Revenue Agency Act, 2017 (Act No. 12 of 2017);

“Dormant entry” means a declaration registered on various versions of the ASYCUDA World System but which is not assessed or to an assessed declaration which is not yet paid;

“Financial Intelligence Centre” means the national centre established under section 7 of the Financial Intelligence Act, 2012 (Act No. 13 of 2012);

“Minister” means the Minister of Finance;

“Registered declaration” means a declaration registered on the different versions of the ASYCUDA World System but which is not yet assessed”;

“rules” means the rules for the licensing of clearing agents under the Customs and Excise Act, 1998; and

“Social Security Commission” means the Social Security Commission established by section 3 of the Social Security Commission Act, 1994 (Act No. 34 of 1994)

Object of Rules

2. The object of the rules is to provide a consolidated framework to guide the licensing of clearing agents in accordance with the provisions of section 73 of the Act.

Persons who must apply to be licensed as clearing agents

3. (1) Any person who, for the purpose of section 40 of the Act, makes an entry or delivers a bill of entry relating to any goods for reward on behalf of any importer or exporter of goods, must apply to the Commissioner to be licensed as a clearing agent under section 73 of the Act.

(2) Subject to rule 4, the person referred to in subrule (1) may be a –

(a) natural person who is a citizen or a permanent resident of Namibia or has a fixed business premises in Namibia;

(b) a juristic person with a fixed business premises in Namibia; or

(c) a delegated officer in an executive position of an organ of State.

(3) Subsidiaries or associated companies of juristic persons must be licensed separately from the parent or holding company.

Requirements for licensing as a clearing agent

4. (1) To be licensed in terms of section 73 of the Act and of these Rules, any person referred to in rule 3 must –

(a) submit an application on the prescribed form in rule 5;

(b) subject to rule 15(2), furnish security in the form of a guarantee from a banking institution in the amount of N\$20 000.00 or any other amount up to N\$150 000.00 which the Commissioner may require as security;

- (c) provide proof of registration with the Business Intellectual Property Authority;
 - (d) provide proof of registration with the Financial Intelligence Centre;
 - (e) submit a certified copy of a certificate of fitness issued by a municipality or local authority in the area in which the person intends to conduct clearance business;
 - (f) subject to rule 5, provide proof a fixed business premises in Namibia in the form of a latest municipal bill or a lease agreement, where applicable, with access to facilities such as a computer and email;
 - (g) submit certificates of good standing from the Namibia Revenue Agency and the Social Security Commission, where applicable;
 - (h) subject to rule 9, submit a certificate for the successful completion of the training referred to in rule 9; and
 - (i) subject to rule 8, submit a certificate for the successful completion of the proficiency test referred to in rule 8 in which the person attained a seventy (70) per cent grade or higher.
- (3) In addition to the above, natural persons referred to in rule 3(2)(a) must also provide certified copies of a valid certificate of Conduct issued by the Namibian Police Force.
- (4) In order to comply with the requirements under subrules(2) (h) and (i), juristic persons referred to in rule 3(2)(b) must have at least one natural person who –
- (a) successfully completed the training referred to in rule 9;
 - (b) passed the proficiency test referred to in rule 8 with a seventy (70) per cent grade or higher; and
 - (c) has a valid a certificate of Conduct issued by the Namibian Police Force.

Application for clearing agent license

- 5.** (1) The application for the licensing of a clearing agent shall be made on form 73 A and accompanied by the following –
- (a) certified copies of the identity/passport documents of the natural person or natural person(s) of the juristic person referred to in rule 4(3);
 - (b) a non-refundable application fee of N\$1500.00; and
 - (c) proof of the applicant’s authority to apply for licensing as a clearing agent.
- (2) Any natural person referred to in rule 4(3) and who is duly authorised in writing by the juristic person referred to in rule 3(2)(b) may submit an application on behalf of a juristic person for licensing as a clearing agent under these Rules.
- (3) The application form in subrule (1) must be fully completed and submitted in duplicate to the Commissioner through the relevant Principal Customs and Excise officer at the point of entry or exit where the applicant intends to do business.

(4) Whenever an application is submitted under this rule, the Namibia Revenue Agency must conduct an inspection of the fixed business premises referred to in rule 4 to verify that the person referred to in rule 3 has –

(a) (soft or hard) copies of the International Convention on the Harmonized Commodity Description and Coding System;

(b) (soft or hard) copies of the applicable Harmonised System Customs Tariff Book; and

(c) a place to keep records for 5 years in terms of section 112 of the Act.

(5) The Namibia Revenue Agency must issue an inspection report corresponding to form 73 B after the inspection in subrule (5) has been conducted to enable the Commissioner to grant or refuse an application for the licensing of a clearing agent in terms of rule 10.

Exemptions:

6. (1) Any person who clear goods solely for their own account and not on behalf of another importer or exporter is not required to be licensed under these Rules.

(2) Notwithstanding subrule (1), any person referred to in subrule (1) must be registered as a Direct Trader Input in order to obtain access to the ASYCUDA World System.

Clearing goods without a license

7. Any person who makes an entry or delivers a bill of entry relating to any goods for reward on behalf of any importer or exporter of goods without a license issued under these rules shall be subject to the penalties imposed under section 90 of the Act.

Proficiency test

8. (1) Subject to rule 5, any person applying for licensing as a clearing agent must register for the proficiency test announced bi-annually by the Commissioner and attain a pass of seventy (70) per cent grade or higher.

(2) The application to complete the proficiency test referred to in subrule (1) must be made on form 73 C and accompanied by a fee of N\$500-00 per person.

(3) The proficiency test shall be conducted bi-annually during January and July every calendar year;

(4) The Commissioner must publish a notice announcing the date(s), time and place(s) for the conduct of the proficiency test at least one (1) month prior to the date indicated in the notice.

(5) Written notice of the results of the proficiency test taken under this rule must be provided to each person referred to in subrule (1) within fourteen (14) working days from the date of writing.

(6) Persons who fail to attain a seventy (70) per cent grade or higher will be allowed to take the proficiency test after every six months.

(7) The proficiency test referred to in subrule (1) shall not be a requirement for the renewal of a clearing agent license under rule 16.

(8) Any person referred to in rule 3 who passed the competency test conducted during March / April 2021 and attained a seventy (70) per cent grade or higher, shall, for the purpose of this rule, be deemed to have passed the proficiency test and shall not be required to complete the proficiency under this rule.

Training of persons prior to proficiency test

9. (1) The Namibia Revenue Agency must provide training to persons applying for licensing as a clearing agent under these Rules.

(2) The application for training referred to in subrule (1) must be made on form 73 C and accompanied by a fee of N\$500-00 per person.

(3) The training of persons applying for licensing as a clearing agent under these Rules must be followed by the proficiency test referred to in rule 8.

(4) Notwithstanding subparagraph (1) above, the training referred to in subrule (1) may be provided by the Namibia Revenue on request by clearing agents at a fee of N\$500-00 per person.

(5) The Namibia Revenue Agency must publish a notice announcing the dates, time and place(s) for the training of persons referred to in this rule, at least one (1) month prior to the date indicated in the notice.

(6) The training of persons applying for licensing as a clearing agent under this rule shall not be a requirement for the renewal of a clearing agent license under rule 15.

Granting or refusal of clearing agent license

10. (1) The Commissioner shall consider an application for the licensing of a clearing agent submitted in terms of rule 5 and may, subject to this rule –

(a) refuse to issue the clearing agent licence; or

(b) grant the clearing agent licence; or

(c) grant the clearing agent licence subject to such conditions set out in these Rules;

or

(d) refer the application back to the applicant with a request for further particulars relating to the application as the Commissioner may deem necessary.

(2) If the Commissioner is satisfied that the person referred to in rule 3 has met the requirements stipulated in rule 4 and that such person has submitted an application in terms of rule 5, then he or she must issue a clearing agent license in the form corresponding to form 73 D of these Rules.

(3) The clearing agent license issued under subrule (2) must indicate the declarant code and be issued to the clearing agent within four (4) weeks from the date of the application referred to in rule 5 at a fee of N\$100 stipulated in item 835 of Schedule 8 to the Act.

Refusal, cancellation or suspension of clearing agent license

11. (1) The Commissioner may, but subject to an appeal to the Minister, refuse any application for the licensing of a clearing agent or any application for the renewal of an existing clearing agent license, or may cancel or suspend a clearing agent license for a specified period, if the person referred to in rule 3 or the clearing agent, as the case may be –

- (a) has failed to comply with the requirements stipulated in rule 4; or
- (b) has provided any false or misleading information in the application for the licensing of a clearing agent or any supporting document submitted under these Rules;
- (c) has omitted to state any facts material to the consideration of the application;
- (d) has contravened or failed to comply with any provision of this Act;
- (e) has been convicted of an offence under this Act;
- (f) has been convicted of any offence of which dishonesty is an element;
- (g) is declared insolvent by the High Court;
- (h) in the case of a natural person, becomes deceased;
- (i) if a surety requests for the cancellation of a guarantee lodged under rule 4;
- (j) has accumulated outstanding liabilities exceeding the amount of security provided for a period of 30 days;
- (k) has failed to provide 70 per cent security of the outstanding liability for a period of 30 days and/or to clear dormant entries in terms of the periods stipulated in rule 15;
- (l) has not engaged in any activity for a period of at least one (1) year preceding the date of the application for renewal of his/her license; or
- (m) has failed to notify the Namibia Revenue Agency of any changes under rule 12.

(2) The refusal, cancellation or suspension by the Commissioner under subrule (4) and the grounds on which such refusal, cancellation or suspension is based shall be communicated to the person submitting the application under rule 5 or to the clearing agent, as the case may be, within a period of four (4) weeks from the date of such determination.

(3) When the renewal of an existing clearing agent license is refused, cancelled or suspended under this rule, the Commissioner may allow the affected person to continue to clear or acquit any assessed or registered declarations prior to the suspension or cancellation date.

(4) An appeal contemplated in subrule (4) shall be noted within a period of 30 days from the date of the Commissioner's decision under subrule (6).

(5) Where an appeal with the Minister is lodged under subrule (7), then the refusal, cancellation or suspension of the clearing agent license will be delayed pending the Minister's decision.

(6) If a clearing agent license is refused, cancelled or suspended and there is no appeal against that cancellation or suspension within the prescribed time limit in subrule (7) or if such appeal has been made and dismissed, then the Commissioner may publish a notice of the cancellation or suspension on the Namibia Revenue Agency website.

(7) Nothing in these Rules prohibits any person from approaching a court of competent jurisdiction to appeal or review any decision of the Commissioner or Minister taken under these Rules.

(8) The above grounds also apply to any clearing clerk of a clearing agent and to natural persons of juristic persons referred to rule 4(2).

Conditions of clearing agent license

12. (1) Subject to subrule (2), a clearing agent license issued under these Rules remains valid for the period of 1 January – 31 December each calendar year specified in Schedule 8 to the Act.

(2) The validity of a clearing agent license may be extended until the finalization of an application for renewal if the application is submitted as contemplated in subrule (1).

(3) The clearing agent license issued under these Rules is not transferrable.

(4) The Commissioner may impose further conditions on a clearing agent relating to –

(a) the protection of potential tax revenue on goods imported, stored, handled, transported or in any way dealt with, managed or controlled by the clearing agent;

(b) the inspection of such goods by Customs Officers;

(c) assistance that the clearing agent must provide to the Namibia Revenue Agency in respect of detained or seized goods;

(d) the manner, form, nature or amount of security required; or

(e) compliance with this Act in relation to such goods.

Duties and responsibilities of clearing agents

13. (1) Clearing agents must –

(a) for the duration of the clearing agent license, transact business as a clearing agent at such fixed business premises.

(b) indicate the declarant code as the reference number on all official correspondence with the Namibia Revenue Agency;

(c) ensure that a signed clearing and forwarding instruction form corresponding to form 73 E is submitted to the Department of Customs and Excise in respect each transaction under the Act made on behalf of any importer or exporter;

(d) ensure that the clearing clerks given the responsibility of carrying out clearance business on its behalf are natural persons who have undergone the training referred to in rule 9 and passed the proficiency test referred to in rule 8;

(e) keep and maintain records for a period of five years as stipulated in section 112 of the Act and must make any documents available when so requested;

(f) must not accumulate liabilities or dormant entries exceeding the amount of security provided within a period of 30 days;

(g) take any reasonable steps to safeguard any goods under his or her control; and

(h) comply with any condition issued by the Commissioner under rule.

(2) Clearing agents must immediately notify the Namibia Revenue Agency in writing of any change –

(a) in the address of a fixed business premises;

(b) the legal status of the business; and

(c) in the employment or any other status of clearing clerks, where relevant.

(3) Clearing agents operating under Dry Ports are limited to enter and clear goods originating from and destined to their respective countries.

(4) The provisions of rule 11 apply to any clearing agent who fails to comply with the duties and responsibilities stipulated in this rule.

Registration as an authorized user on ASYCUDA World System

14. (1) Once a clearing agent license is obtained, each clearing agent must complete and submit form 73 E to obtain access to the ASYCUDA World System and attach the following –

(a) the declarant code issued by the Namibia Revenue Agency upon successful granting of a clearing agent license;

(b) certificate(s) of successfully completing the training referred to in rule 9;

(c) certificates of successfully passing the proficiency test referred to in rule 8 with a seventy (70) per cent grade or higher; and

(d) certified copies of the national identity or passport documents of clearing clerks.

- (2) Once the application in subrule (1) is received, user login details to access the ASYCUDA World System will be issued to the clearing agent.
- (3) To ensure minimal errors and the accumulation of dormant entries on the ASYCUDA World System, clearing agents must ensure that the user login details issued under subrule (2) are not used by persons who did not successfully complete the training referred to in rule 9 or who did not pass the proficiency test referred to in rule 8 with a seventy (70) per cent grade or higher.
- (4) Declarations registered on the ASYCUDA World System must be finalized within seven (7) days.
- (5) Liability for the payment of duties arises from the moment of registration on the ASYCUDA World System.
- (5) Clearing agents are allowed to amend or cancel registered declarations on the ASYCUDA World System without paying the N\$50-00 post entry amendment or cancellation fee.
- (6) Subject to rule 15, a clearing agent must request the relevant Principal Customs and Excise Officer to amend or to cancel an assessed declaration on the ASYCUDA World System against the payment of a N\$50-00 post entry amendment or cancellation fee.
- (7) When a declaration is filed in advance of the arrival of the goods and is found to be based on incorrect information from the carrier, shipper or due to unforeseen circumstances, then the Principal Customs and Excise Officer may permit that declaration to be cancelled.
- (8) The failure to renew a clearing agent license under rule 16 will result in the suspension or cancellation of the access granted to the ASYCUDA World System.

Dormant Entries

- 15.** (1) The liabilities of a clearing agent should not exceed the amount of security provided within a period of 30 days.
- (2) Notwithstanding subrule (1) and rule 4(1)(b), clearing agents who are licensed on the basis of completing the proficiency test referred to in rule 8(8) with a seventy (70) per cent grade or higher and who have dormant entries, shall be required to furnish seventy (70) per cent security that is equivalent to the outstanding liability.
- (3) Once the security under subrule (2) is lodged, clearing agents referred to in subrule (2) are required to clear or settle outstanding liabilities in accordance with the periods stipulated below:

Number of dormant entries:	Period to clear dormant entries:
1 - 100	0 – 3 months

101 - 300	0 – 5 months
301 - 600	0 – 7 months
601 - 1000	0 – 10 months
1001 and higher	0 – 12 months

(4) To support the clearance of dormant entries in subrule (3) above, the provision of transport documents, such as the invoices prescribed by regulation, the shipper's statement of expenses incurred by the shipper, a copy of the confirmation of sale or other contract of purchase and sale, the importer's written clearing instructions, and other documents relating to the goods as the Customs may require listed under section 41(1)(c) of the Customs and Excise Act, 1998 is waived for dormant entries older than five years, provided the importer confirms and undertakes in writing that they imported the consignment and is willing to pay the taxes and duties due.

(5) Failure to comply with the periods stipulated under subrule (3) will result in the cancellation or suspension of the clearing agent license.

Renewal of clearing agent license

16. (1) A clearing agent must within the validity period of a clearing agent license referred to in rule 12 apply for the renewal of a clearing agent license by completing form 73 F.

(2) The application for the renewal of a clearing agent license shall be made on form 73 G and submitted in duplicate to the Commissioner through the relevant Principal Customs and Excise officer at the point of entry or exit where the applicant intends to do business.

(3) The application referred to in subrule (2) must be accompanied by –

(a) certificate(s) of clearing clerks who successfully underwent the training referred to in rule 9 and attained a seventy (70) per cent grade or higher in the proficiency test referred to in rule 9; and

(b) certified copies of the national identity or passport documents of the clearing clerks referred to in subrule (a);

(c) a renewal fee in the amount to N\$100.00 per annum.

(4) If a clearing agent does not submit an application for renewal within the validity period contemplated in subrule (1), then the clearing agent licence expires as set out in Schedule 8 to the Act.

(5) The application for the renewal of a clearing agent license may be refused under the conditions stipulated in rule 11.

Short title

17. These Rules are called the Rules for the Licensing of Clearing Agents.