

# Security: Bonds and Provisional Payments

The main purpose of bonds is to cover for potential duties and taxes ,therefore this chapter shall deal with procedures pertaining to bonds and provisional payments.

## 1. Surety Bonds

Security is generally given in the form of a bond. Only insurance companies or registered banking institutions may be accepted as sureties to bonds. Head Office should be consulted if there is any doubt as to the acceptability of a surety.

- a. Preparation: Bonds are prepared in triplicate as follows:
- b. Number of copies; the original and two copies are submitted to the principal and surety for signature. One copy is retained by the principal and one copy is retained by the surety. The original is returned to the customs Subdivision Trade Facilitation where the bond is filed and is maintained there.
- c. Names of principal, surety and witnesses: the full names of the principal and surety and the full names and designations of the individuals authorized to sign must appear in the preamble to the document.

The principal's address must not appear on the document. The names of the principal and surety and the designations of the individuals who will sign the bond must again appear at the foot of the form where the signatories will sign the bond. A signatory to a bond should sign in his own capacity and not "for Manager", "for Accountant" etc.

- d. Endorsements: Under no circumstances may a bond with an endorsement (other than giving it a number or stating the premium to be paid) thereon by either of the parties thereto will be accepted. Bonds bearing clauses whereby the right to withdraw as surety is reserved are not accepted by the Directorate.
- e. Status of signer: if a firm is a partnership, its representative cannot sign as "Director" or if the manufacturer is a proprietary company the person authorized to sign cannot sign as "Partner", etc.
- f. Witnesses: each signature of those signing on behalf of the principal and surety requires two witnesses. The Directorate prefers that each signature is witnessed by two different persons. Bonds are, however, acceptable if one person signs as witness for both persons signing on behalf of the principal or surety. In such instances the witness need only to sign once. If, however, one person signs as witness for the principal and surety then such person must sign twice as witness – once for each group of signatures.

- g. Alterations: Any alterations to a bond must be initialed by all signatories including witnesses. When one of the original witnesses is not available to initial an alteration, other witnesses may witness the amendment, signing their names in full. When a former signatory (on behalf of the principal or surety) is not available to initial an alteration, it will be in order for a duly authorized person to authenticate the alteration by signing his name in full, giving his capacity, date and signature which is then attested to by two witnesses. Officers should ensure that bonds are signed only by officials who have been duly authorized thereto.
- h. Only original to be signed: only original bonds should be signed. Endorsements by way of addenda to bonds need not be completed by the original signatories to the documents. Any duly authorized official of the principals or sureties to the bonds may complete such addenda but officers must ensure that such officials are duly authorized and that their designations are reflected next to/under their signatures.

## 2. Record keeping requirements

- a. Bond records: the originals of these bonds are to be kept in a place of safety at the Head Office. A register of bonds should be maintained in a file folder and copies of all correspondence relating to that bond shall be placed in that folder.
- b. Coordination with Regional Offices: When receiving a Customs new bond, or any addendum to a Customs bond, or receiving notification of withdrawal or surety, or any other change to a Customs bond will immediately fax a copy of that bond, addendum or other change to the Regional Office or vice versa. The program manager will maintain an up-to-date list of all bonds, including: the name of surety, the amount and date of bond, any increases decreases, cancellation of particulars etc. (i.e., the history of each bond.) The program manager will, on a monthly basis, issue a printout to all Controllers listing current bonds in effect.

## 3. Stamp Duties as far as it concerns Customs Bonds

Stamp duty is leviable on the premium paid on a bond and not on the sum assured. Payment of stamp duty is effected every 3 months by means of a declaration furnished by the surety to the Receiver of Revenue.

4. When Bonds become invalid: a bond holder shall finish Customs with a bond and it is of paramount importance that, if such bond , should become invalid a new bond must be obtained to safeguard revenue. If the financial institution wishes to withdraw the bond Customs must ensure whether any liabilities still exists prior to the cancellation of such bond.

A bond becomes invalid for further clearances on the withdrawal of surety or on change in legal identity of the principal (i.e. the licensee, rebate user, manufacturer) who immediately ceases to be licensed/registered and is therefore not entitled to deal in further transactions. The following constitute a change in legal identity:

- a. Sole proprietorship: the bond becomes invalid if the business ceases operations because of the death of the proprietor (unless a clause in the will provides for the continuance of the business for the benefit of the deceased's estate); the sale of the business; or the conversion into a partnership or company.

- b. Partnership :As all members of a partnership are individually and jointly responsible for the acts and the debts of the entity which the partnership constitutes, any change in the membership of such partnership terminates the partnership. A change in legal entity is therefore created on the death of one of the partners (unless a clause in the agreement provides for the continuance of the business for the benefit of the deceased's estate); on dissolution; on reduction in membership; on admission of additional persons to membership; on sale of the business; or on conversion of the partnership into a company.
- c. Private or public company: Companies, whether private or public differ from partnerships in that shareholders are not either individually or collectively responsible for the debts of the company beyond the amount remaining unpaid on their share holding. A private company, usually distinguished by the word "Proprietary" after its name, is one which restricts the right to transfer its shares; limits the number of its members to fifty; and prohibits any invitation to the public to subscribe for any shares or debentures of the company; A public company is one which does not restrict the right to transfer its shares; may have any number of members; and invites the public to subscribe for shares or debentures.
- d. All companies, whether private or public, are required by law to draw up a memorandum setting out the objectives of the company and articles of association. These articles, together with the memorandum, may be termed the constitution of the company. A company may change these articles (or constitution), but such change is not a change in the legal identify of the company. Similarly, the conversion of a private company into a public company, and vice versa, does not constitute a change in legal identity. The legal identity of a company is changed only by winding up an amalgamation. Changes of constitution do not affect legal identity of a company. Where a change in the name occurs and there is no change in the legal identity, the firm must only furnish an addendum to their bond. The death of a director of a company does not necessitate a fresh bond.
5. Action required due to change in legal identity: the following action should be taken immediately if any change in the legal identity, change of name or change in surety etc. are noted:-
- Further rebate, warehouse, or in-bond entries should be refused until such time as a new bond has been registered.
  - New application forms should be called for.
  - A warehouse/rebate inspection should be undertaken and if the officer is satisfied that all the obligations under such bond have been met, the Controller shall notify the Program Manager.
6. Withdrawal of surety: a surety to a Customs bond may give the Controller thirty days notice of withdrawal of such bond. This period commences on the date of receipt of the notification of withdrawal. At the end of the period, no new obligations can accrue under the bond concerned but the surety remains responsible in respect of transactions entered into prior to the expiry date. When a surety notifies his intention to withdraw from a bond the licensee/registrant concerned should be called upon to make other arrangements with a bank or insurance company and to furnish a surety bond on or before the expiry of the period of notice.
7. Cancelled bonds a cancelled bond may, at the request of the issuer, be returned as soon as the commitment in respect of which it was given has been fulfilled.

## 8. APPLICATION TO MAKE PROVISIONAL PAYMENTS

General Provisional payments may be utilised when an individual does not have a bond. If an individual has a bond which covers the activity for which surety is required, provisional payment will not be demanded unless the unobligated bond amount is clearly inadequate to cover the potential liability to the Government of the proposed activity.

- a. Amount Provisional payments shall only be demanded in an amount equal to the potential liability to the government of the activity which is being covered by that payment. This normally includes duties, Value Added Tax (VAT). The object in taking provisional payments is to protect the revenue and the mounts of provisional payments accepted must be sufficient and appropriate for that purpose.
- b. Wording Provisional payments should be carefully worded to show the reason and circumstances in which they are lodged and the exact requirements which are to be fulfilled before refund can be entertained. Any wording which could not reasonably be considered as legally binding should be avoided.
- c. Time limits where the amount of provisional payment is sufficient to cover duty and other eventualities. When a provisional payment is lodged pending compliance with certain requirements within a specified period, e.g. re-exportation of goods, etc. a time limit within which the stipulated conditions must be complied with, must be specified. If the conditions are not complied with within the time specified such provisional payments must be liquidated. The period stipulated should not exceed 365 days. All time limit provisional payments should be entered in a register which should be examined on a monthly basis. Time expired provisional payments which are still on hand must be following up to ensure that the conditions thereof are complied with.
- d. Extensions Controllers are authorised to approve one application for extension of the time limit on a provisional payment. Further requests for an extension should be referred to the Head Office.
- e. Provisional payments financed by third parties When a provisional payment is financed by a third party, care must be taken to ensure that it is signed by the person responsible for complying with the conditions set forth on the NA 70 and not by the other party.
- f. Liquidation Provisional payments may be liquidated in the normal manner within 2 years of the date of lodgement. Where applications are received to liquidate provisional payments after 2 years of lodgement, such applications must first be approved by the Controller, if the provisional payment is not time expired for more than one year. In such cases, the matter should be referred to Head Office. Before the amounts of provisional payments are refunded it must be ensured that all conditions under which the provisional payments were lodged have been fully complied with.
- g. Lost NA 70 where originals of provisional payments are lost, the matter should be reported to Head Office.

**REPUBLIC OF NAMIBIA - MINISTRY OF FINANCE**

**CUSTOMS AND EXCISE  
APPLICATION TO MAKE PROVISIONAL PAYMENT**

NAME AND ADDRESS:

AMOUNT: N\$ \_\_\_\_\_

CUSTOMS OFFICE:

AMOUNT IN WORDS

Circumstances of or reason for application (including, in the case of an admission of guilt in terms of Section 101 of Act 20 of 1998, the section of the said Act and a description of the transaction involved).

Entry No.:

Date:

Declarant:

Supplier:

of (Country):

Marks and Nos., No and Description of packages	Tariff Classification	Description	Country of Origin	Value	Duty and Taxes

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I/We, \_\_\_\_\_, hereby undertake to comply with the requirement of the Directorate in terms of the Customs and Excise Act and the regulations in respect of the goods or circumstances to which this payment relates within the understated period determined by the Controller.

Date:

Signature:

**ADMISSION OF GUILT UNDER SECTION 101 OF ACT 20 OF 1998**

I/We, \_\_\_\_\_ hereby admit –

- \* that I/we have contravened the provisions of the above-mentioned section of Act 20 of 1998
- \* that I/we have failed to comply with the provisions of the above-mentioned section of Act 20 of 1998

(\*Delete whichever is not applicable)

I/We, \_\_\_\_\_, agree to abide by the Director's decision and apply, pending such decision, to make provisional payment as indicated above.

FOR OFFICIAL USE ONLY

The provisional payment may be accepted provided the relative requirements are complied with within the following period: \_\_\_\_\_

Date:

Controller:

DISPOSAL INSTRUCTIONS

The amount of N\$\_\_\_\_\_ may be refunded and the balance of N\$\_\_\_\_\_ (if any) must remain in the account.

Date:

Controller:

Cheque No.

Date:

Number