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EXCISE DUTY BILL, 2020

A Bill

for

An Act to repeal the Customs and Excise Act, 1982, to make provision for excise control of all locally manufactured and excisable goods entering or leaving Lesotho; to provide for the levying of excise duties; to facilitate the implementation of other legislation applicable to such goods and for connected matters.

ENACTED BY THE PARLIAMENT OF LESOTHO

Short title and Commencement

1. This Act may be cited as the Excise Duty Act and it shall come into operation on the date of its publication in the Gazette.

PART I- PRELIMINARY

Interpretation

2. In this Act, unless the context otherwise requires-

“Assessment” means the determination of an amount of excise duty which is undeclared, under-declared or unpaid issued by the Commissioner General to the person or persons who is or are liable to the payment of the excise duty;

“Commissioner-General” has the same meaning as assigned to it by Section 2 of LRA Act, 2001;

“Display” means the keeping of samples of packaged excisable goods by the Commissioner-General for brand reference purposes;

“Escrow account” means a bond, deed or other document kept in the custody of a third party and taking effect only when a specified condition has been fulfilled.

“Excise duty” means a duty of excise levied on the goods liable to excise duty by virtue of Schedule 1 Part 2 of the Customs and Excise Tariff;

“Excise Duty point” means the time when the excise duty on excisable goods becomes payable to the Commissioner General. The excise duty point is the earlier of the time when:

- (a) Excisable goods are imported or produced in Lesotho;
- (b) there is a contravention of any of the provisions of this Act which pertains to producing, holding or moving goods under duty suspension;
- (c) excise duty on the goods cease to be suspended;
- (d) excisable goods are consumed; and
- (e) excisable goods are identified as being in the market place with and no excise duty is paid on the goods;

“Excisable goods” means the goods listed in Schedule 1 Part 2 of the Customs and Excise Tariff as goods liable to excise duty;

“Excise control” means the control in terms of this Act;

“Excise Duty Suspension” means the deferral of an excise duty payment due to the Commissioner General.

“Excise stamp” means a physical or digital marking issued by the Commissioner-General which is designed to be affixed to retail containers of any type of excisable goods;

“Excise warehouse” means a storage approved by the Commissioner General as a place where the excisable goods listed on the excise warehouse licence may be produced and stored under excise duty suspension;

“Export” in relation to goods, means transporting, taking, sending or removing goods out of Lesotho;

“Flowmeter” means an instrument for measuring the rate of flow of a fluid, especially through a pipe;

“Forfeiture” means the transfer of the title of goods and equipment which is already seized by the Commissioner General;

“Licensed excise trader” means a trader who deals in excisable goods but who is not a licensed producer;

“Licensed producer” means a person who is licensed by the Commissioner General to produce excisable goods under excise duty suspension in Lesotho;

“Seals” means a metal strip or fastener used for locking vehicles or excise warehouses containing excisable goods;

“Seizure” in relation to goods, means to take physical possession of the goods without divesting a person of ownership of the goods;

“Stakeholders” means representatives of the Lesotho Revenue Authority, licensed producers and licensed excise traders in Lesotho.

“Surety” means surety provided in terms of Part XXXX of Customs Act; and

“Public International Organisations” has the same meaning as assigned to it by Section 3 of the VAT Act 2001.

Application of this Act

3. This Act applies to all excisable goods that are subject to excise control.

PART II- POWERS AND DUTIES OF COMMISSIONER GENERAL AND EXCISE OFFICERS

Delegation of Duties and Powers of Commissioner General

4. The Commissioner General may delegate his powers to the excise officers.

General Powers and Duties of Commissioner General

5. The Commissioner General has the power to –

(1) implement provisions of this Act;

(2) advise the Minister in the development and implementation of excise duty policies and matters connected thereof;

Commissioner General to hold consultations with Stakeholders

6. The Commissioner General shall hold regular consultations with stakeholders on excise duty related matters.

Commissioner General to give directions

7. The Commissioner General shall –

(1) take such steps as he thinks fit to control and regulate the manufacture, use, storage, removal and sale of excise goods;

(2) give written directions to a excise trader, licensed producer or to a person who is, under this Act or any other legislation, authorised to deal in excisable goods or to use excisable goods in the manufacture of non-excisable goods.

Control measures on the premises or containers

8. The Commissioner General may, for the purpose of exercising control over excisable goods –

(1) place an excise warehouse under lock;

(2) affix seals or marks on an excise warehouse or on any excisable goods therein;

(3) require, where applicable, a licensed producer to –

(a) equip his excise warehouse with a flowmeter, an apparatus or equipment to record the flow, or the number of bottles of excisable goods;

(b) install a (CCTV) system in his excise warehouse at such places as the Commissioner General may direct; or

(c) give to the Commissioner General online access to the CCTV system;

(4) require an excise trader or a licensed producer to affix or cause to affix excise stamps on excise goods as may be specified by the Commissioner General in such form, manner and conditions as may be prescribed by regulations to this Act;

(5) require an excise trader or a licensed producer to put markings as an alternative to excise stamps on such prescribed excisable goods and in such form and manner and on such conditions as the Commissioner General may determine;

(6) require an excise trader or a licensed producer to remit excise duty due on the goods;

- (a) where goods are destroyed under the Commissioner General`s control and supervision;
- (b) where the Commissioner General is satisfied that the excisable goods are accidentally destroyed while they are –
 - (i) in the excise warehouse;
 - (ii) transported under Commissioner General`s excise control from one excise warehouse to another; or
 - (iii) exported under Commissioner General`s control.

Power to require information

9. (1) The Commissioner General shall request an excise trader or a licensed producer or his representative to furnish him with such information as he may determine for purposes of verification and collection of excise duty.

(2) Where the licensed producer fails to declare excise duty for Commissioner General to verify, the Commissioner General shall make his own assessment and request the licensed producer to pay the excise duty due to the Commissioner General.

Power to examine records

10. The Commissioner General may, for the purpose of ascertaining the excise duty payable on any goods, request the licensed producer to produce for –

- (a) examination, at such time and place as he may specify, any records or documents which he considers necessary; and

(b) retain for such period as he considers necessary, any records or documents referred to in paragraph (a).

Power to examine goods, apparatus or equipment

11. (1) The Commissioner General may, for the purpose of ascertaining the excise duty payable on any excisable goods, request the manufacturer to produce for examination –

(a) such goods at such time and place as he may specify;

(b) any apparatus, equipment, flowmeter or CCTV system in an excise warehouse;

(c) the recordings of the CCTV system in respect of any period, subject to a time frame prescribed in regulations made under this Act.

(2) The licensed producer shall bear all costs and risks relating to transportation of the goods to the place of examination and the measuring, weighing, counting, unpacking and repacking and opening and closing of the packages.

Right of access to excise warehouse

12. Where the Commissioner General reasonably suspects the commission of an offence under this Act, he shall, at any time and without warrant –

(a) enter an excise warehouse;

(b) enter an unlicensed excise warehouse; or

(c) use force where access is denied.

Search warrant

13. (1) The Commissioner General may apply for a search warrant to the judicial officer for purposes of enforcing this Act to premises outside excise controlled areas.

(2) Where the Commissioner General obtains a search warrant issued pursuant to subsection (1), he may –

(a) enter –

(i) any area, premises or facility which is not under excise control and any other business area, premises or facility for purpose of enforcing this Act;

(ii) aircraft, train, railway carriage or vehicle; and

(b) search-

(i) a business area, premises or facility;

(ii) aircraft, train, railway carriage or vehicle.

Power to take assistance

14. The Commissioner General may, in executing his duties and powers under this Act or any other revenue Acts, request the assistance of any police officer or any other relevant official.

Power to stop and search any vehicle

15. (1) The Commissioner General may, on reasonable suspicion, stop and search any vehicle for the purpose of ascertaining whether it contains any evidence of the commission of an offence under this Act.

(2) The driver of any vehicle who fails to stop or fails to permit such search whenever required by the Commissioner General shall commit an offence

and upon conviction be liable to a fine of Five thousand maloti or imprisonment for a period of two years or both.

Powers of arrest

16. Where the Commissioner General suspects that a person has committed or is likely to commit an offence in terms of this Act, he may carry out an arrest.

Manner and effect of an arrest

17. (1) Where a person being arrested submits to custody, the Commissioner General may arrest the person with or without a warrant.

(2) Where a person being arrested resists arrest, the Commissioner General may arrest the person by actually touching the body of the person, and where necessary forcibly confine the person's body.

(3) The Commissioner General when effecting the arrest pursuant to subsection (1) shall, at the time of effecting the arrest—

(a) inform the arrested person of the cause of the arrest; or

(b) in the case of an arrest effected by virtue of a warrant, hand the person a copy of the warrant where the person arrested so demands.

Arrest of persons without warrant

18. The Commissioner General when carrying out an arrest pursuant to section 16 may, without a warrant, arrest a person who -

(a) impersonates the Commissioner General;

(b) obstructs an excise officer in the execution of his duties under this Act;

(c) refuses to comply with a lawful instruction of the Commissioner General in performing his functions under this Act; or

(d) on reasonable grounds, suspects that he has contravened the provisions of this Act.

Arrest of persons under authority of warrant

19. (1) The Commissioner General may apply to any magistrate for a warrant authorising the arrest of a person who has contravened the provisions of this Act.

(2) A Magistrate may issue a warrant in terms of subsection (1), only on written application by the Commissioner General.

(3) The application made pursuant to subsection (1) shall set out the following-

(a) the offence allegedly committed by the person ;

(b) the grounds for suspicion of commission of an offence; and

(c) the offence allegedly committed within the area of jurisdiction of the Magistrate.

(4) A warrant of arrest issued by a Magistrate pursuant to subsection (1), shall be executed by the Commissioner General in accordance with provisions of this Act.

(5) The Commissioner General shall, within a period prescribed in the regulations to this Act, refer the person to the Police Station.

Power to seize goods

20. (1) The Commissioner General may seize goods within a period prescribed in the regulations to this Act, where –

- (a) the goods are liable to seizure;
- (b) the goods are or may be submitted as evidence in a court of law; or
- (c) in any other circumstances as may be determined by the Commissioner General.

(2) Goods seized in terms of subsection (1) shall, following the prescribed time limits in the regulations, be –

- (a) destroyed;
- (b) sold by public auction;
- (c) donated to charity organisations ; or
- (d) disposed of by any other means as the Commissioner General may determine.

(3) Where the Commissioner General reasonably suspects that any excisable goods seized under subsection (1), contain a substance which is, or which renders or is likely to render the excisable goods, injurious to health he may cause the goods to be destroyed.

Notice of seizure

21. (1) The Commissioner General shall, when seizing excisable goods in terms of this Act, issue a notice of seizure—

- (a) in the case of goods that are detained, to the person to whom the notice of detention was issued;
- (b) in the case of seized goods to the person—
 - (i) who submitted the clearance declaration; or
 - (ii) in whose possession the goods were, at the time of seizure.

(c) in the case where goods are detained at the excise warehouse, to the licensed producer to whom the notice of detention was issued.

(2) Subsection (1) does not apply where a person to whom the notice was issued is unknown or cannot be found.

(3) Notice of seizure issued in terms of subsection (1), shall be signed by the Commissioner General.

Termination of seizures

22. (1) The Commissioner General shall terminate the seizure of goods where –

(a) a person whose goods are seized has applied for termination of seizure and the application is granted;

(b) the goods are seized in error; or

(c) a court of law so orders.

(2) Where the seizure of goods is terminated in terms of subsection (1), the Commissioner General shall, in writing notify the person to whom the notice of seizure was issued.

Termination of seizure on application by the owner of goods

23. (1) A person whose goods are seized in terms of Section 21, may apply to the Commissioner General for termination of seizure.

(2) The Commissioner General may, after considering the application made in terms of subsection (1), approve the application subject to such conditions as the Commissioner General may impose.

(3) Where the Commissioner General approves the application pursuant to subsection (2), the applicant shall pay any-

(a) outstanding excise duty, interest on the excise duty and an administrative penalty that may be payable on or in respect of the excisable goods; and

(b) expenses incurred by the Commissioner General in connection with the seizure, and initial detention of the goods.

(4) The Commissioner General may, after considering the application made in terms of subsection (2), refuse the application.

(5) Where an application is refused in terms of subsection (4), the Commissioner General shall notify the applicant in writing of his decision and reasons to refuse the application.

Court proceedings

24. (1) Notwithstanding Section 23 (1), the person who is issued with a notice of seizure by the Commissioner General may, within the time limits prescribed in regulations made under this Act, institute proceedings in the courts of law.

(2) Where the person who is issued with a notice of seizure does not institute proceedings against the seizure and –

(a) the excisable goods are not the subject matter of any criminal proceedings, the Commissioner General shall cause the seized goods to be disposed of in terms of Section 20 (2) of this Act; or

(b) the goods are the subject matter of criminal proceedings and are subject to wasting or other forms of loss in value or the cost of storage or maintenance of the goods is likely to exceed its value, the goods may be sold by the Commissioner General in accordance with Section 20 (2) of this Act.

Surety for seized goods

25. (1) Where excisable goods are seized pursuant to Section 20 of this Act and an action instituted in the Courts of law against the Commissioner General, the Court may order the release of the goods upon payment of surity demanded by the Commissioner General.

(2) The surety provided pursuant to subsection (1), shall be an amount equivalent to the value of excisable goods inclusive of any excise duty payable.

Forfeiture

26. (1) Where a person is convicted of an offence under this Act, the Court shall order the forfeiture of any excisable goods, raw materials and equipment used in the production of excisable goods.

(2) Subject to subsection (1), the Court may, upon the conviction of any person, order the forfeiture of any excisable goods, apparatus, material, vehicle or other article seized under Section 20 be produced to the Court.

Offences

27. (1) Where the excise trader or a licensed producer fails to comply with provisions under this Part, he shall upon conviction be liable to a fine of five thousand maloti or to imprisonment for a period not exceeding twelve months or both.

(2) Any excise officer who –

(a) makes any collusive seizure or delivers or makes any agreement to deliver or not to seize any excisable goods or any other goods liable to seizure under this Act; or

(b) directly or indirectly accepts any payment or reward, whether pecuniary or otherwise, from any person on account of any act relating to the exercise

of his duties under this Act, commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand Maloti or to imprisonment for a period not exceeding two years.

(3) Any person who makes any collusive agreement with an excise officer to induce him in any way to do or to neglect or not to perform his duties under this Act, commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand Maloti or to imprisonment for a period not exceeding two years.

(4) Any person who interferes with an arrest, a search or a seizure made under this Act commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand Maloti or to imprisonment for a period not exceeding one years.

(5) Any person who –

(a) makes or subscribes or produces or causes to be made, subscribed or produced any declaration, certificate or other instrument required for the purposes of this Act which is incorrect or false in any material particular;

(b) refuses or fails to produce to an officer or to a police officer a permit or a written authorisation issued by the Commissioner General under this Act or a document required to be kept under section 60;

(c) fails to pay excise duty or any part thereof;

(d) unlawfully obtains a drawback of excise duty;

(e) misleads an officer or a police officer in any way likely to affect him in the exercise of his duties under this Act;

(f) fails to comply with a direction or requirement issued or made by the Commissioner-General;

(g) removes or damages a notice affixed by the Commissioner General or who causes the notice to be removed or damaged; or

(h) otherwise contravenes or fails to comply with any other provision of this Act, commit an offence and is liable upon conviction to a fine of fifty thousand maloti or to imprisonment for a period not exceeding ten years or both.

PART III: LIABILITY TO EXCISE DUTY

Charge to excise duty

28. (1) Commissioner-General shall charge excise duty on goods listed in Schedule 1, Part 2 of the Customs and Excise Tariff.

(2) The rate of excise duty charged shall be the rate in force at the time the excise duty becomes due.

(3) Excisable goods become liable to excise duty in Lesotho when the excisable goods:

(a) enter Lesotho from a SACU country where no evidence that any excise duty is paid in the SACU country;.

(b) are imported into Lesotho from a country outside of SACU; and

(c) are produced in Lesotho.

The Excise Duty Point

29. (1) The Commissioner General shall charge excise duty at the earlier of the following times:

(a) the time the excisable goods are imported from a country outside of SACU;

(b) the time when the goods enter Lesotho from a SACU country but there is no evidence of payment of excisable goods in the SACU country of production;

(c) the time when excisable goods are found outside excise warehouse but no excise duty is paid on the goods;

(d) the time when goods on which no excise duty is paid are found in an unlicensed excise warehouse;

(2) The Commissioner General shall charge excise duty when excisable goods are released from an excise warehouse.

(3) Excise duty charged pursuant to subsection (1) shall be charged at the time when:

(a) goods are consumed in an excise warehouse;

(b) stock discrepancy is identified at an excise warehouse and the licensed producer cannot explain how the discrepancy occurred;

(c) the goods that left an excise warehouse with no excise duty payment;

(d) the goods are found with no evidence of export or receipt by a properly approved exempt user.

The person liable to pay excise duty in Lesotho

30. (1) The Commissioner General shall charge excise duty to all persons liable to pay the excise duty under this Act.

(2) The following persons shall be liable to pay excise duty-

(a) the person in possession of goods at the time of importation.

(b) the person in possession of goods at the unlicensed excise warehouse;

(c) the licensed producer; or

(d) any person who is involved in the release of excisable goods without payment of excise duty.

Determination of Excise Duty

31. (1) Where a person is licensed as a licensed producer by the Commissioner General to operate an excise warehouse, the Commissioner

General shall charge excise duty on all excisable goods warehoused by such person.

(2) The licensed producer of excisable goods shall-

(a) submit a declaration to the Commissioner General at the time the goods are removed from an excise warehouse; and

(b) pay any excise duty due to the Commissioner General.

Declaration of excise duty

32. Any person who imports excisable goods, shall declare such goods and pay excise duties and taxes due to the Commissioner General on clearance of the goods for customs purposes.

Accounting Period

33. (1) The excise duty due on goods removed from an excise warehouse in each calendar month shall be declared on the declaration form prescribed in regulations to this Act.

(2) The excise duty due shall be paid by the 20th day of the month following the accounting period, following the calendar month in which the goods were released from the excise warehouse.

Calculation of excise duty

34. (1) When excisable goods reaches an excise duty point, the licensed producer shall calculate excise duty payable on excisable goods.

(2) Excise duty calculated pursuant to sub section (1), shall be;

(a) computed by reference to the taxable base of the goods at the rate corresponding to the goods as specified in Schedule 1; and

(b) payable to the Commissioner General at the time specified in section 33.

(3) The goods described in of Schedule 1 Part 1 to the Customs and Excise Tariff shall, be rebated on fulfillment of any conditions laid down under that Part.

(4) Notwithstanding subsection (3), goods which do not fulfil any conditions laid down under terms of rebate shall be subjected to payment of excise duty.

(5) Where there is no evidence of proper use of rebated goods, the excise duty due on the goods shall be paid.

(6) Where goods described in Schedule 1 Part 1 are imported by a public international organisation, the Commissioner General shall grant such a public international organisation a rebate from payment of any excise duty.

(7) Where the excise duty rate is specified as an ad valorem rate, the price used to calculate the excise duty due will be the price the goods are sold on removal from the excise warehouse in Lesotho.

(8) The price used to calculate excise duty shall be an arm's length price.

(9) Where the sale from the excise warehouse is to an affiliated company, International Transfer Pricing rules shall be used when establishing the reasonable price to be used to calculate the excise.

(10) Where the price used to calculate excise duty is found by the Commissioner General to be less than a reasonable arm's length price, the Commissioner-General shall assess the under declared excise duty.

(11) Where the excise duty is calculated by reference to a specific method of taxation:

(a) for alcohol: the labelled quantity and alcohol strength will be used;

(b) for tobacco products: the labelled quantity of tobacco products in a container will be used; and

(c) for any other excisable goods: the labelled quantity shown in the relevant weight or volume denominations as specified in the Customs and Excise Tariff, will be used.

(12) The Commissioner General may take samples of the packaged excisable goods to determine alcohol strength.

(13) Where the results of the test indicate that the alcohol strength or quantity of excisable goods is higher than that declared on a label, the Commissioner General shall request the licensed producer to pay the excise duty due on that higher quantity.

(14) Where the licensed producer fails to pay any excise duty due on the higher quantity, the Commissioner General shall issue the licensed producer with an assessment for payment of the excise duty.

Objection in relation to assessment

35. (1) Where a licensed producer or any other person dealing with excisable goods is dissatisfied with an assessment issued by the Commissioner General in relation to:

(a) payment of excise duty;

(b) under declared excise duty on excisable goods;

(c) under payment of excise duty due;

(d) lost excisable goods and the licensed producer cannot provide a reason for the loss; or

(e) removal of goods from an excise warehouse without supervision of the Commissioner General, he may lodge an objection to the

Commissioner General within a period prescribed in the regulations to this Act.

(2) Notwithstanding the provisions of sub-section (1), the licensed producer or a person dealing with excisable goods shall pay the sum demanded by Commissioner General pending finalization of an objection raised.

(3) The Commissioner General shall issue to the licensed producer or a person dealing with excisable goods, a notice of assessment specifying the sum demanded by the Commissioner General.

(4) Where the licensed producer fails to comply with the provisions of this Section, the Commissioner General may, in addition to the assessment, impose penalties.

(5) A notice of assessment issued in terms of sub section (3) shall be made within a period specified in the regulations to this Act.

(6) Where the objection referred to in sub-section (1) is in respect of excisable goods already in free circulation, the Commissioner General shall issue to the licensed producer or any person dealing with excisable goods, a notice of assessment stating:

(a) the amount of excise duty underpaid;

(b) a penalty underpaid; and

(c) interest on the amount underpaid at the rate specified in regulations made under this Act, per month or part of the month from the date of the validated bill of entry to the date of payment.

(7) A notice of assessment made pursuant to sub-section (6) shall be made within a period prescribed in the regulations to this Act.

(8) The amount claimed under sub-section (6) (a) shall be paid to the Commissioner General within a period prescribed in the regulations to this Act.

(9) The Appeals Review Committee established in terms of **section 509 of Customs Act** shall consider an objection made pursuant to subsection (1) and review the decision, and may –

(a) disallow or allow it in whole or in part; and

(b) where appropriate, amend the decision to conform with its determination.

(10) The Commissioner General shall, within a period prescribed in regulations to this Act give notice of the determination to the licensed producer of excisable goods or a person dealing with excisable goods.

Penalty for late payment

36. (1) Where the licensed producer of excisable goods or a person dealing with excisable goods fails to pay any excise duty due on the last day of which it is payable, he shall be liable to pay to the Commissioner General in addition to the excise duty, the penalty at a rate prescribed by regulations to this Act.

(2) The Commissioner General may waive the whole or part of any penalty payable under subsection (1) if he is satisfied that failure to pay excise duty within the specified period was due to causes beyond the control of the licensed producer of excisable goods or a person dealing with excisable goods or to any other good or sufficient reason.

Offences

37. Any person who-

- (a) manufactures;
- (b) sells or stores; or
- (c) exposes or offers for sale,

excisable goods on which no excise duty or no sufficient excise duty has been paid commits an offence and is liable on conviction to a fine not exceeding one hundred thousand maloti only or imprisonment for a period of ten years or both.

PART IV: LICENSING OF LICENSED PRODUCERS

Licensing of licensed producers

38. (1) A person who wishes to manage, operate or use excise premises or facilities under this Act, shall make an application for a license to the Commissioner General.

(2) A person who wishes to carry on the following businesses shall, make an application for a license to the Commissioner General:

- (a) producer of excisable goods;
- (b) customs broker;
- (c) transporter who transports excisable goods under excise duty suspension; and
- (d) stores supplier.

(3) No person may conduct business as a customs broker unless licensed as such.

(4) No person may be licensed as a customs broker unless the person is located in Lesotho.

(5) A person who contravenes this Section, commits an offence and liable on conviction to a fine not exceeding fifty thousand Maloti or imprisonment for a period of five years or both.

Application for licensing

39. The application for a license shall –

- (a) be on an application form as may be prescribed by the regulations to this Act;
- (b) contain any information that may be determined by the Commissioner General;
- (c) be signed by the applicant; and
- (d) be accompanied by supporting documents or information as may be determined by the Commissioner General.

Consideration and decision of application

40. (1) The Commissioner General shall, after considering an application for a license, approve the application and issue the license with such terms and conditions as he may determine.

(2) Where –

- (a) the application made pursuant to subsection (1) –
 - (i) does not meet the requirements;
 - (ii) contains false or misleading information;
 - (iii) is accompanied by false or misleading supporting documents;

(iv) omitted to state a fact, which is material to the consideration of the application;

(b) an applicant has not paid duties or taxes which are due;

(c) an applicant has been convicted of an offence under this Act; or

(d) an applicant has been convicted of an offence involving fraud or dishonesty, the Commissioner General may refuse to license the person.

(3) The fit and proper test means that the applicant or any person dealing with excisable goods has a record of the following;

(a) sufficient evidence of commercial viability and credibility;

(b) satisfactory due diligence procedures; and

(c) extensive knowledge on excise matters.

(4) The fit and proper test means that the applicant or any person dealing with excisable goods has no record of the following:

(a) previously involved in revenue non-compliance or fraud;

(b) penalties for wrongdoing or other civil penalties;

(c) previous revocation or refusal of approvals;

(d) disqualified as a director of the company;

(e) directors or shareholders with no criminal convictions of offences involving any dishonesty or links to organized criminal activities;

(f) false or misleading information;

(g) persistent or negligent failures to comply with any record-keeping requirements; or

(h) directors or shareholders attempted dealing with excisable goods in contravention of this Act.

(5) No person will be licensed under this Act unless the person passes the “fit and proper” test.

Offences

41. (1) Any person who –

(a) manufactures excisable goods without a licence; or

(b) manufactures excisable goods in a place other than in an excise warehouse;

(c) forges or counterfeits a licence, a permit or a written authorisation issued by the Commissioner General under this Act;

(d) forges a document required to be kept under section 60;

(e) makes use of or knowingly has in his possession any such forged or counterfeit licence, permit, authorisation or document;

(f)) without lawful authority imports or has in his possession a lock, seal, label or mark used, issued or approved by the Commissioner General;

(g) has in his possession excisable goods which contain a substance which is or which renders or is likely to render the excisable goods injurious to health;

(h) except with the Commissioner General's written authorisation, has in his possession spirits of more than 50 per cent of alcohol by volume;

(l) displays or stores any excisable goods on his business premises or other premises which is not a licensed excise warehouse under this Act; or

(m) tampers or adulterates any excisable goods, commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand Maloti or to imprisonment for a period not exceeding ten years or both.

PART V: LICENSING OF PRODUCTION PREMISES

Licensing of premises

42. (1) A licensed producer of excisable goods may only produce excisable goods at the premises which are licensed under this Part of this Act.

(2) Where the Commissioner General is satisfied that the premises are suitable to carry on production of excisable goods, he shall issue a licence.

(3) Where a licence is issued pursuant to this Part, the license shall be in a conspicuous place in the licensed excise warehouse.

(4) An application for an excise warehouse licence, shall be submitted to the Commissioner General at the same time as the application to become a licensed producer.

(5) The application shall be in such form and manner as prescribed in regulations to this Act.

(6) The application shall be submitted within the time limits prescribed in the regulations to this Act, and prior to the expected commencement of production activities.

(7) The Commissioner General shall make a decision to issue or reject the excise warehouse application in the same timeframe as the licensed producer application.

(8) A separate application shall be submitted for every premises on which excisable goods are intended to be produced.

(9) A licensed producer may perform the activities on the licence at the approved excise warehouse as listed on that licence, as approved by the Commissioner-General.

(10) The excise duty liability on the goods shall be accounted for on removal of the goods from the excise warehouse in line with Part III of this Act.

Alteration of a licence

43. Where the licensee is issued with the licence in terms of Section 42 (2), the licensee shall not alter-

(a) any specifications or measurements of the premises as contained in the license issued by the Commissioner General;

(b) any terms and conditions relating to excisable goods as contained in the license issued by the Commissioner General unless authorized by the Commissioner General.

Surety of stored goods in excise warehouse

44. Where excisable goods are held and stored at the approved excise warehouse under excise duty suspension, the Commissioner General may require a licensee to provide surety to cover any duty or tax risks in relation to goods imported, exported, received, stored, processed, handled or in any way dealt with, managed or controlled by the licensee or by a person for whom the licensee acts as a representative.

Communication of decisions on application

45. (1) The Commissioner General shall, where he considers the application and makes a decision on such application, he shall notify the person in writing about his decision to:

- (a) issue the licence,
- (b) reject the licence, or
- (c) ask for more information in relation to the decision.

Issuing of licenses

46. (1) The Commissioner General shall, where he approves the application, issue the license to the person with such terms and conditions as the Commissioner General may determine.

(2) A person who is issued with a licence under this Section shall not transfer the licence to any other person.

(3) The license issued pursuant to subsection (1) shall be valid for a period of one year from the date of issue.

(4) A person who contravenes this Section commits an offence and is liable on conviction to a fine not exceeding fifty thousand Maloti or imprisonment for a period of five years or both.

Rejection of an application

47. (1) Where the Commissioner-General rejects an application, he shall provide reasons for refusing the application.

(2) Where the Commissioner-General rejects an application, the applicant may submit after receipt of notice of decision, a representation within the period prescribed in the regulations to this Act.

(3) Where the Commissioner-General upholds the original decision to reject the application, the applicant may appeal against that decision, within the timeframe prescribed in regulations to this Act.

Transfer of license

48. (1) Where a licence is issued pursuant to section 46, the licensee shall not transfer issued license to any other person except with the approval of the Commissioner General.

(2) Where the Commissioner General approves the transfer of a license, the transferee shall meet all terms and conditions that may be determined by the Commissioner General.

(3) Where a license is transferred under subsection (2), the Commissioner General shall amend the license with respect to the licensee's name, or amended details in relation to the excise warehouse.

Applications for renewal of licenses

49. (1) A person issued with a licence pursuant to section 46, shall before a license lapses, and no later than a period prescribed in the regulations, apply for the renewal of a licence.

(2) The Commissioner General shall, upon approval of an application made pursuant to subsection (1), renew the license.

(3) The Commissioner General shall, where a person issued with a license pursuant to subsection (1) is not engaged in the activity for which the license is issued for a period of at least one year preceding the date of the application for the renewal of a license, refuse to renew the license.

(4) The Commissioner General may refuse to renew a licence in circumstances where the licensee has failed to comply with its legal obligations under this Act.

(5) Where a licensee fails to apply for renewal of a licence within a time specified by regulations to this Act, the licensee shall stop producing

excisable goods and apply for a new licence as though it was a new business.

Amendment of license

50. (1) A license issued pursuant to section 46, shall be amended –

- (a) on application by the holder of the licence;
- (b) by the Commissioners General where he considers it necessary;
- (c) in order to extend or limit the purposes for which the licence is issued;
- (d) in order to update or change any detail on the licence; or
- (e) in order to correct a technical or editorial error.

(2) The Commissioner General shall, before amending the licence pursuant to subsection (1) –

- (a) notify the licensee about the proposed amendment;
- (b) provide reasons for the proposed amendment;
- (c) give the licensee an opportunity to submit representations on the proposed amendment within a timeframe as prescribed in the regulations to this Act; and
- (d) inform the licensee that he may appeal against the Commissioner General`s decision.

(3) An amendment to a license issued shall take effect on a date determined by the Commissioner General.

Purposes for amendment of licenses

51. The license issued pursuant to Section 46, shall be amended –

- (a) if it is necessary –

(i) to protect the Government from any loss of duty and tax that may occur on goods received, stored, handled or transported by a licensee.

(ii) for the surety of the goods; or

(iii) to ensure that this Act is complied with; or

(b) if any circumstances which are material to the initial granting of the license have changed.

Grounds for withdrawal or suspension of licenses

52. (1) The Commissioner General shall withdraw a licence where a person –

(a) acquired the license under false and misleading information;

(b) is no longer entitled to a license in terms of this Act;

(c) is sequestrated or liquidated;

(d) is no longer engaged in the activity for which the licence was issued.

(e) sells, alienates or ceases to operate at any of the premises to which his licence relates;

(f) fails to pay his licence fees under this Act;

(g) is or becomes disqualified from holding a licence; or

(h) fails to comply with any notice given by the Commissioner General under any Revenue Laws administered by him.

(2) The Commissioner General may suspend the licence issued in terms of section 46, where the person –

(a) is in breach of the terms and conditions of his licence;

(b) fails to pay to the Commissioner General on or before the date on which any duties, taxes or security are due;

(c) is in breach of a provision of this Act;

(d) is convicted of an offence under this Act;

(e) is convicted of an offence involving fraud or dishonesty;

(f) has transferred, assigned or sublet the licence or is only nominally the true licensee;

(g) is no longer a fit and proper person;

(h) acted in a dishonourable, improper, fraudulent, dishonest or immoral manner, or has engaged in any violent conduct on the premises to which the licence relates; or

(i) is convicted of permitting drunkenness or violent, riotous, disorderly or immoral conduct on premises to which the licence relates.

(3) Where in the opinion of the Commissioner General, the excise warehouse to which the license relates:

(a) ceases to be suitable for the purposes to which the license was issued; or

(b) is conducted in such a way as to be a danger to public health, public order or public safety; the Commissioner General shall suspend such a license.

(4) The Commissioner General shall, before he suspends or withdraws the licence issued in terms of section 46:

(a) notify the person in writing about his decision and reasons for the suspension or withdrawal of the licence;

(b) requests the person to submit representations within the timeframe prescribed in regulations to this Act;

(c) inform the person that he may appeal against the Commissioner General's decision; and

(d) give the person an opportunity to submit representations on the proposed suspension or withdrawal within the timeframe prescribed in regulations to this Act.

(5) No person shall use an expired, lapsed, suspended or withdrawn license.

Reinstatement of a licence

53. Where the Commissioner General suspends, revokes or cancels a licence, no refund of the licence fee shall be made or compensation paid in respect of the period of the suspension or the unexpired period of the licence.

Surrender of a licence

54. Where the Commissioner General revokes or cancels a licence, the licensee shall on receipt of a notification issued in terms of section 52 (4) (a), surrender the licence to the Commissioner General within such period as maybe prescribed in the regulations to this Act.

Provision of surety to cover unpaid excise duty

55. The Commissioner General may require a licensee to provide surety to cover any duty or tax risks in relation to goods imported, exported, received, stored, processed, handled or in any way dealt with, managed or controlled by the licensee or by a person for whom the licensee acts as a representative.

Commissioner General's powers following expiry, lapsing, suspension or withdrawal of licenses

56. The Commissioner General may, where the license has expired, suspended or withdrawn:

(a) take control of all or any specific goods in the custody of the person -

(i) for the recovery of duties and taxes payable on the goods; or

(ii) to ensure that this Act is complied with in relation to the goods.

(b) require the person or the person in whose custody the goods are, to remove the goods to an excise duty controlled area specified by the Commissioner General;

(c) require or allow the goods to be cleared for home use or any other customs procedure; or

(d) require the person to pay any costs incurred by the Commissioner General in carrying out any action in terms of this Section.

Offences

57. (1) A person who contravenes section 52 (5) commits an offence and liable on conviction to a fine not exceeding fifty thousand Maloti or imprisonment for a period of five years or both.

(2) Any person who-

(a) forges or counterfeits a lock, seal, label, excise stamp or mark apparatus or equipment, CCTV system used, issued or approved by the Commissioner General;

(b) makes use of, or knowingly has in his possession any such forged or counterfeit lock, seal, label, excise stamp or mark apparatus or equipment, CCTV system;

(c) without lawful authority breaks, alters, erases or otherwise interferes with a flowmeter, lock, seal, label or mark apparatus or equipment, CCTV system used, issued or approved by the Commissioner General;

(d) without lawful authority, alters excisable goods by the addition of any substance or by the extraction of any of the ingredients ;

(e) commits an offence and is liable upon conviction to a fine not exceeding one hundred thousand maloti or imprisonment for a period of ten years or both.

PART VI: CONTROL OF PREMISES AND EXCISABLE GOODS

Records

58. (1) All licensed producers shall keep at the licensed excise warehouse, all records pertaining to the receipt of goods, production, storage, losses, and removal of excisable goods as prescribed in regulations to this Act.

(2) The records as required under sub section (1) and any other records which the Commissioner General may direct the licensed producer to keep, shall be kept in an electronic format or manually in a legible and auditable manner, in an official language of Lesotho.

(3) All records shall be kept pursuant to subsection (1) shall be for a minimum of five years.

Inspection of excisable goods

59. Where excisable goods are imported by a licensed producer, the Commissioner-General may allow the goods to move under excise duty suspension to a licensed excise warehouse, subject to conditions imposed by the Commissioner General.

Interference with the premises and excisable goods

60. Where the licensee is issued with the license in terms of Section 46, the licensee shall not alter-

(a) any specifications or measurements of the premises as contained in the license issued by the Commissioner General;

(b) any terms and conditions relating to excisable goods as contained in the license issued by the Commissioner General, unless authorized by the Commissioner General.

Right of access to and taking samples from excisable goods

61. (1) While goods are under the control of the Commissioner General, the licensee may, with the approval of the Commissioner General –

- (a) have access to the goods;
- (b) take samples of the goods, or
- (c) perform any other action in relation to the goods for purposes of testing for verifying the following:
 - (i) the nature or characteristics of the goods;
 - (ii) the quality or content of the goods;
 - (iii) the tariff classification, customs value or origin of the goods;
 - (iv) evidence in a court of law; or
 - (v) any other matter that may be determined by the Commissioner General for the purposes of this Act.

(2) While excisable goods are imported or at the premises of the licensed producer, the Commissioner General may-

- (a) have access to the goods;
- (b) take samples of the goods, or
- (c) perform any other action in relation to the goods for purposes of testing for verifying the following:
 - (i) the nature or characteristics of the goods;
 - (ii) the quality or content of the goods;

(iii) the tariff classification, customs value or origin of the goods;

(iv) evidence in a court of law; or

(v) any other matter that may be determined by him for the purposes of this Act

(3) Where a person who submits a clearance declaration pursuant to this Act is not satisfied with the results of tests made by the Commissioner General, he may, with the approval of the Commissioner General –

(a) have access to the goods;

(b) take samples of the goods; and

(c) perform any other action in relation to the goods.

(4) The Commissioner General may allow the licensee to import a limited quantity of excisable goods as samples, as prescribed in regulations to this Act.

(5) The samples imported in terms of sub section (4), may be used for testing-

(a) the behavior of a product; and

(b) the market of the product.

(6) Samples imported pursuant to sub section (4) shall only be used for purposes for which it was intended for.

(7) The tests performed pursuant to subsections (1), (2) and (3) shall be carried out at any laboratory or any other place as may be designated by the Commissioner General.

- (8) Samples taken pursuant to subsection (1), (2) and (3) may be –
- (a) examined, analysed or tested;
 - (b) subjected to a chemical, mechanical or technological process;
 - (c) used for obtaining advice, including expert or technical advice on the goods; or
 - (d) used for any other purpose that may be determined by the Commissioner General in terms of this Act.
- (9) The Commissioner General shall, not clear for home use or any other customs procedure, samples taken from excisable goods in terms of subsection (1).
- (10) The Commissioner General may, under his supervision, allow access to, sampling of or any other action taken in relation to excisable goods pursuant to subsection (1).
- (11) For purposes of assessing excise duty, the Commissioner General shall, where samples of excisable goods are taken pursuant to subsection (1), include the samples in the quantity of goods cleared for home use or any other customs procedure.

Samples of imported goods

62. (1) Samples taken in terms of section **404 of the Customs Act** of imported goods before the goods are cleared for home use or any other customs procedure shall, if the goods are subsequently cleared for—
- (a) home use, be included in the quantity cleared for home use; or
 - (b) a customs procedure, for tax or any purpose is regarded as cleared for home use.

(2) Samples of imported goods taken in terms of section **404 of the Customs Act**, already —

(a) cleared for home use, do not affect the amount of any tax paid or payable on the goods; or

(b) under a customs procedure, shall for tax purposes and any other purpose be regarded as cleared for home use.

(3) A person who cleared the goods for a customs procedure shall amend the clearance declaration to exclude the samples from the declaration.

(4) Subsections (1), (2) and (3) do not apply to samples temporarily removed and samples shall for all purposes be regarded to remain part of the excisable goods from which they were taken.

(5) Excisable goods taken pursuant to section **404 of the Customs Act** for sampling, shall be returned to the owner one year after goods were taken for sampling or any other period as the Commissioner General may determine.

Display of samples of excisable goods

63. The Commissioner General may request the licensee of excisable goods to provide samples from the premises free of excise duty for display.

Samples of goods cleared for export

64. (1) Samples taken pursuant to section **404 of the Customs Act** from goods cleared for export under the export procedure shall, for excise duty purposes, be regarded as goods in free circulation if—

(a) the goods are in free circulation before they are cleared for export;
and

(b) the samples of the goods are taken before they are exported from Lesotho.

(2) An exporter who submits clearance declaration of the goods for export shall, amend the clearance declaration to exclude the samples from the declaration.

(3) Subsection (1) does not apply to samples temporarily removed from the excisable goods.

(4) Samples taken from the goods pursuant to subsection (1) shall remain part of the excisable goods from which they were taken.

Stocktaking and excise duty unpaid

65. (1) The Commissioner General may from time to time as he may determine, request the licensee to undertake stocktaking of any excisable goods.

(2) A stocktaking done under sub-section (1) shall be conducted within a period prescribed in regulations to this Act.

(3) The Commissioner General shall be notified of the stock take occurrence within a time period specified in regulations made under this Act.

(4) Where stocktaking is done pursuant to subsection (1) and a discrepancy is identified by the Commissioner General, he shall impose excise duty for the discrepancy identified.

(5) Where the Commissioner General considers that having regard to –

(a) the quantity or weight of goods or materials used as input in the manufacture of excisable goods;

(b) the manner in which excisable goods are measured or weighed;

(c) the number of excise seals, if any, issued to a manufacturer; or

(d) any other circumstances, the excise duty chargeable is not paid, the Commissioner General may claim from the manufacturer such amount of excise duty as he may consider.

(6) Where a discrepancy is identified pursuant to subsection (4), the licensed producer shall pay the excise duty claimed within the date prescribed in the regulations to this Act.

(7) Where the licensed producer proves to the satisfaction of the Commissioner General that the excise duty unpaid was not due to his fault, Commissioner General shall not demand payment of excise duty.

(8) Where a dispute arises on the amount of excise duty claimed pursuant to subsection (4), the licensed producer may, within a period prescribed in the regulations to this Act, object to the claim in a form approved by the Commissioner General.

(9) Where a licensed producer makes an objection pursuant to subsection (8), he shall specify in the form the detailed grounds of the objection.

(10) Where it is proved to the satisfaction of the Commissioner General, that the licensed producer fails to make an objection within a specified period due to unforeseen circumstances, the Commissioner General may consider the objection.

(11) Where the Commissioner General refuses to consider an objection made pursuant to subsection (10), he shall, within the prescribed period give notice of the refusal to the licensed producer.

(12) Where the Commissioner General makes a claim pursuant to subsection (4), the licensed producer shall prove to the satisfaction of the Commissioner General that such a claim is incorrect.

Security

66. (1) The Commissioner General shall request the licensed producer to furnish him with a security in the form of a bond in such amount as the Commissioner General may determine.

Offences

67. (1) A person who contravenes section 52 (1) commits an offence and is liable upon conviction to a fine not exceeding fifty thousand Maloti or imprisonment for a period not exceeding five years or both.

(2) Any person who, without lawful authority –

(a) has in his custody, possession or control;

(b) keeps, allows or causes to be kept; or

(c) acquires possession of, or removes, sells, conceals or deals with any apparatus or excisable goods manufactured, removed, sold, transferred or obtained in contravention of this Act;

commit an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand Maloti or to imprisonment for a period not exceeding ten years or both.

(2) Any person who-

(a) fails to deliver excisable goods to its intended destination;

(b) uses excisable goods for a purpose other than an exempt purpose; or

(c) sells the goods to an unauthorized person, commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand Maloti or to imprisonment for a period not exceeding five years or both.

PART VII: REMOVAL OF GOODS WITH NO EXCISE DUE

Removal of excisable goods

68. (1) A licensed producer may, without payment of excise duties, remove excisable goods from excise warehouse:

(a) when the goods are destined for export outside of SACU;

(b) when the goods are destined for an organisation or public international organisation that is approved to receive the goods without excise being paid;

(c) when the goods are destined for a duty free shop at an airport; or

(d) any other case as may be determined by the Commissioner General in writing.

(2) Excisable goods removed in terms of subsection (1), shall be accompanied by commercial movement documents as prescribed by regulations to this Act.

(3) Excisable goods may only be transported from a licensed excise warehouse under excise duty suspension by a transporter who is properly licensed under Part IV of this Act.

(4) The Commissioner General shall request the licensed producer to keep in his records, evidence that excisable goods were exported or received by the intended recipient.

(5) Where the licensed producer fails to produce evidence pursuant to subsection (4), the Commissioner General shall demand payment of excise duty.

Drawback of excise duty

69. (1) Any person may make an application to the Commissioner General;

(a) in a form approved by the Commissioner General;

(b) within a period prescribed in the regulations to this Act; and

(c) for a drawback of any excise duty paid in excess under conditions prescribed in regulations to this Act.

(2) Where the Commissioner General is satisfied that the applicant is entitled to a drawback, he shall pay the drawback of excise duty to the applicant.

(3) Where an application for the drawback of excise duty is made and the Commissioner General is not satisfied that the applicant is entitled to a drawback, he shall give written notice to the applicant of his decision.

(4) No drawback of excise duty which is less than the amount specified in the Schedule 5 of the Customs and Excise Tariff shall be made.

Excise Stamps

70. (1) The Commissioner General may require all excisable goods of description provided in the regulations to this Act to have excise stamps.

(2) Excise stamps may be in any form as specified in regulations to this Act and on any excisable goods so specified.

Penalties

71. (1) Any person who fails to comply with any provision of this Act where such a provision is not stipulated as an offence, commits an omission to the Act, and shall, if found guilty by the Commissioner General., be liable to a penalty stipulated in the regulations to this Act.

(2) Any person who commits an omission in terms of subsection (1), shall be liable to pay, in addition to the penalty –

(a) any excise duty, customs duty and value added tax due on the goods; and

(b) the license fee payable.

Cessation of business

72. (1) Where the licensee specified in Schedule 2 Part I or Part II of Customs and Excise Tariff intends to cease carrying on business, he shall provide written notice to the Commissioner General.

(2) Where a licensee ceases to hold a licence, he shall –

(a) submit all entries and pay to the Commissioner General the excise duty due on all excisable goods remaining in his premises not later than a period prescribed in the regulations to this Act; or

(b) with the approval of the Commissioner General, transfer the excisable goods to another premises.

(3) For the purposes of subsection 2 (a), the excise duty shall be due on excisable goods at such stage of their manufacture as may be prescribed in the regulations to this Act.

(4) Where a licensee ceases to hold a licence pursuant to subsection (1), he shall with the approval of the Commissioner General sell, store, expose or offer for sale all excisable goods within a period prescribed in the regulations to this Act.

Erroneous payment

73. Where any person has benefited or lost through error made from any transaction relating to payment of excise duties, the Commissioner General shall request such a person to pay or be paid the amount of excise duty erroneously gained or lost within such period as may be determined by the Commissioner General.

Power to make regulations

74. (1) The Minister may make regulations pursuant to the control of excise duty in Lesotho with the aim of protecting the revenue.

(2) For purposes of this Act, the Commissioner General may make implementing rules.

Offences

75. (1) Any person who fails to keep records in terms of section 58, is liable upon conviction to a fine not exceeding twenty thousand maloti or imprisonment for a period of two years or both.

(2) Any person who fails to affix excise stamps on excisable goods in terms of section 70, is liable upon conviction to a fine not exceeding twenty thousand maloti or imprisonment for a period of two years or both.