



Customs @ Wylie

This e-mail flyer is created by the International Transport, Trade & Energy Division of Shepstone & Wylie. We have offices in, amongst other places, [Durban, Cape Town, Richards Bay and Johannesburg.](#)

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Law Alert

UCP600

The Uniform Customs and Practice for documentary credits (UCP500), reconciling conflicting laws on letters of credit, has been relied on by banks and international traders since 1993. This uniform practice is soon to be replaced by UCP600, which will come into force on 1 July 2007. It is an important development for everyone involved in international trade from commodity houses, insurers, carriers and obviously the financial institutions.

The National Credit Act


The National Credit Act is aimed primarily at lending institutions and traders selling goods on credit. However, it still requires most parties in the logistics chain to consider their conditions of credit and standard trading conditions (STC's) to ensure compliance. The Act will now be in full force and effect as from 1 June 2007 and failure to comply may result in your conditions of credit or STC's being held to be not binding on your customers.

Section 91: Damned if you do, damned if you don't

We are often asked how one should respond to a letter of demand from Customs. A demand usually calls for payment of duty, VAT, penalties on VAT, a deposit (penalty) and an amount in lieu of forfeiture. The demand invites you to elect to be dealt with in terms of section 91 of the Customs & Excise Act (the Customs Act). This means that the "contravention" will be dealt with administratively, on the basis you agree to abide by the Commissioner's ultimate decision. If you do not elect to be dealt with in this way Customs is entitled to institute either criminal or civil proceedings against you for the recover of the debt to the State.

While every matter needs to be properly considered on its own merits, the following tips may be helpful:

- The letter of demand must be carefully checked to see whether it cannot be set aside or queried on the basis of any errors in the letter or the attached schedules.
- You are not obliged to agree to be dealt with in terms of section 91.

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- You must only agree to be dealt with in terms of section 91 if you are satisfied that there has in fact been a contravention of the Act. If there has been a contravention, one can make payment in terms of section 91 and subsequently apply for mitigation of any penalties or forfeiture in terms of section 93 of the Customs Act.
 - If there is any doubt as to whether there has in fact been a contravention of the Customs Act, then you must not agree to be dealt with in terms of section 91.
 - The penalties and forfeiture levied by Customs are almost always in excess of what would be levied by a court because the officials stick to set parameters and do not consider the individual circumstances of matters.
 - The letter of demand or any decision regarding mitigation of amounts levied by Customs, may be subject to review by the High Court if Customs have failed to properly apply their minds, have acted unreasonably or unfairly, or have made a mistake of fact or law.
 - If you wish to pay under protest, then care must be taken when completing the DA70 form to ensure that you do not sign an admission of guilt, since this may prevent you from later defending the claim or allegations.

May Customs levy forfeiture for every contravention?

The Guidelines and Policy for the Application and Administration of Penal Provisions (paragraph 6 on page 5) states that :

"It must be remembered that forfeiture must be charged only where evidence exists of intentional fraud...".

In the case of *Commissioner of SARS v Formalto (Pty) Ltd*, the Supreme Court of Appeal referred to the Guidelines and held that it would be entirely inappropriate to levy forfeiture unless there is proof of fraud or some intentional falsity.



Did you know?

- The re-written Customs Act will be circulated externally for comment by August 2007 for a period of six months.
- The SARS website is extremely useful. You can access forms, legislation and even guidelines. See www.sars.gov.za
- A failure by Customs to make a decision within a reasonable time is subject to review in terms of section 6 of the Promotion of Administrative Justice Act.

The Lighter Side

- Carpe diem – seize the cheque
- The secret of business is to know something that nobody else knows.
- An eye for an eye only ends up making the whole world blind.
- Four doctors were talking shop one day...

An Israeli doctor said, "Medicine in my country is so advanced, we can take a kidney out of one person, put it in another and have him looking for work in six weeks."

A German doctor said "That's nothing! In Germany, we can take a lung out of one person, put it in another and have him looking for work in four weeks."

A Russian doctor said, "In my country, medicine is so advanced, we can take half a heart from one person, put it in another and have them both looking for work in two weeks."

The American doctor, not to be outdone, said "Hah! We took an asshole out of Texas, put him in the White House and half the country was looking for work the next day!"



Contact Us

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