 

**REPUBLIC OF LIBERIA**

**REVENUE ADMINISTRATIVE REGULATION**

**PURSUANT TO PART V OF THE LIBERIA REVENUE CODE**

**V. 1500-01-27-17**

**REGULATION NO.**

**SUJECT:**

**CUSTOMS BROKERS LICENSING AND ADMINISTRATION**

**REGULATION, REQUIREMENTS, AND PROCEDURES**

**May 24, 2017**

**DATE:**

1. **PREAMBLE**

WHEREAS, Section 1500 of Liberia Revenue Code (the “Code”) authorizes the promulgation of regulations for “the licensing as customs brokers of persons of good moral character, and of corporations, associations and partnership” including requiring “as a condition to the granting of any license, the showing of such facts as …may be deem advisable as to the qualifications of the applicant to render valuable service to importers and exporters”;

WHEREAS, Section 21(1) (a) & (b) of the LRA Act of 2013 (the “LRA Act”) provides that the Commissioner General shall be responsible for the administration and supervision of the Liberia Revenue Code (the “Code”), including, inter alia,

1. Ensuring the effective and fair interpretation, application and implementation of the Code; and
2. Ensuring the proper and diligent implementation of the Code.

WHEREAS, the general authorization provisions of Section 8(1) of the LRA Act also authorize the LRA “to discharge its functions…to take actions necessary to accomplish those functions in the manner and using the methods permitted under the Code and other laws”; and

WHEREAS, Section 7(2)(i) of the LRA Act grants the LRA specific statutory authority and responsibilityfor the licensing of Customs Brokers in keeping with its provisions and those of the Code;;

**NOW THEREFORE**, pursuant to the provisions of the Code and the LRA Act as well as applicable Liberian laws, the LRA herewith sets forth the following administrative rules, procedures, and requirements for the licensing of Customs Brokers in Liberia.

**2.0 Purpose**

The purpose of this Administrative Regulation includes the following:

1. To promote professionalism, integrity, and accountability in the business of customs brokers in Liberia;
2. To establish and implement a system of licensing, registration, and regulation of customs brokers first by ensuring that customs broker licenses are issued only to natural and legal persons evaluated and found to have the character, training and skills to provide competent services to importers and exporter in respect of trade and commerce; and
3. To support efficient and effective tax administration by ensuring that all customs brokers practicing in Liberia are properly licensed and adhere to professional standards and follow the rules, regulations, and laws.

**3**.**0**  **Establishment of Licensing Regime**

3.1 Upon this Regulation becoming effective [and subject to the transitional period provided hereunder], every business, corporation, partnership or natural person operating or seeking to operate and carry on commercial business as customs broker shall be required to apply for, obtain, and remain in possession of a valid customs broker license issued by the LRA.

3.2 No person shall transact business as a customs broker without a license granted in accordance with the provisions of this Regulation, provided that this requirement shall not be construed to require a license in the case of any person clearing goods or transacting business pertaining to his own importations.

3.3 A customs broker license shall be of two kind/types: Personal Customs Broker License; and Institutional Customs Broker License. The personal license shall be issued to eligible natural person while the institutional license shall be issued to any eligible company, corporation, or partnership.

**4.0 Customs Broker Activities Defined**

4.1 The Business of Customs Brokersencompasses all activities, dealings, engagements and representation with LRA or any of its officers or employees in respect of customs clearance and forwarding, taxpayer’s rights, privileges, or liabilities under the Code or regulations administered by the LRA.

4.2 The activities or business of Customs Brokers include but are not limited to:

1. Filing of documents
2. Declarations on importations and exportations
3. Corresponding and communicating with the LRA
4. Providing written advice with respect to any individual or entity, transaction, plan, or arrangement having a potential for tax avoidance or evasion, and
5. Representing a client or any third party at conferences, hearings, and meetings

**5.0 Persons Eligible to carry on the activities or Business of a Customs Broker**

In keeping with Section 1500(1) of the Code, only persons having institutional Customs broker License (legal persons - sole proprietorship, partnership, corporation, and association) or Personal Customs Broker License are qualified to and shall be allowed to conduct Customs Broker Business with the LRA on behalf of a third party (importers and exporters)

.

**6.0 Requirements to obtain a Customs Broker License**

**A. Personal Customs broker License**

**The applicant for a Personal Customs Broker License must**

1. Be at least 18 years of age
2. Be a Liberian National
3. Be trained as a customs broker and must have passed the Customs Brokers Competency Licensing Examination administered by the LRA; which will be administered at a date, time, and place that will be announced at least three (3) months prior to the exam
4. Have a valid identification card (Driver License, Passport, Work ID, Social Security ID, or Voter Registration)
5. Provide two passport size photos
6. Be free of criminal conviction in accordance with the Liberia Revenue Code (LRC) or any applicable law as evidenced by a valid Police Clearance
7. Provide a valid current Tax Clearance at time of Licensing and/or at renewal and must remain tax compliance throughout his/her brokerage practice career
8. Possess a valid Tax Identification Number (TIN)
9. Complete the brokers licensing application
10. Pay a licensing fee as provided for in Regulation promulgated by the Ministry of Finance and Development Planning under Section 2111 of the LRC relating to Fee Structure for Occupational and Professional Business Licensing

**B. Institutional Customs Broker License**

**1. The following legal business entities are eligible for licensing by the LRA to carry on the business of customs brokerage in Liberia:**

Any sole proprietorship (person), partnership, corporation, or association legally registered as a customs brokerage business entity, who meets all requirements established herein; and is not currently under suspension or disbarment from practice before the LRA; will be duly licensed by the LRA to practice before the LRA.

**2. The applicant for an Institutional Customs Broker License shall meet the**

**following requirements:**

1. Must be a registered business such as a sole proprietorship, partnership, corporation, or association with a physical address in Liberia
2. Must have a Business Registration and/or Articles of Incorporation and any other legal business formation documents
3. Must be tax compliant as evidenced by a valid current tax clearance;
4. Must have at least two (2) officers, members, agents, or employees satisfying the requirements of licensed Customs Brokers except, in the case of a sole proprietorship which requires only the proprietor (owner) to be a licensed Customs Broker.
5. Must Secure an indemnity bond as follow:
6. Sole proprietorship, $5,000 USD (five thousand United States Dollars)
7. Partnership, $10,000.00 USD (ten thousand United States Dollars),
8. Corporation or Association, $15,000.00 USD (fifteen thousand United States Dollars)
9. Must complete brokerage firms ( sole-proprietor, partnership, corporation, and association) licensing application form
10. Pay a license fee, as provided for in the Business and Professional Licensing Fee Policy Regulation published by the Ministry of Finance and Development Planning.

**7.0 Specific Requirements for Institutional Customs Broker License**

**7.1 Sole Proprietorship License**

1. In order to qualify for a Customs Broker license, a Sole Proprietorship registered owner must be a licensed Customs Broker
2. The sole Proprietorship business registration must include Customs Brokering as a line of business

**7.2 Partnership License**

1. In order to qualify for a Customs Broker license, a Partnership must have at least two members of the Partnership who are licensed Customs Brokers.
2. A copy of the Partnership Agreement must be provided
3. The Partnership Agreement must show that the individuals are full partners with authority to bind the partnership.
4. The Partnership Agreement must include Customs Brokering as a line of business

**7.3 Association License**

1. In order to qualify for a Customs Broker license, an Association must have at least two officers of the Association who are licensed Customs Brokers.
2. Copy of the Articles of Association must be provided
3. The Articles of Association must include Customs Brokering as a line of business

**7.4 Corporation License**

1. In order to qualify for a Customs Broker license, a Corporation must have at least two officers of the Corporation who are licensed Customs Brokers
2. Copy of the Articles of Incorporation must be provided
3. The Articles of Incorporation must include Customs Brokering as a line of business

**8.0 Licensing Procedures**

The Customs Brokers licensing procedure are available in a separate publication available on the LRA Website, Tax Payer Services Division, and the Office of Professional Responsibility Section (OPRS)

.

**9.0 Duration of Customs Brokers License**

A Customs Brokers license shall be initially issued for one year. It may be extended for an additional period not to exceed three (3) years based on the broker’s risk profile to include practice history record). A Customs Brokers License shall expire on the anniversary date of issuance, unless extended at which time it shall expire on the date stated in its extension.

**10.0 License Renewal**

1. Application for renewal of license must be submitted to the OPRS at least two months prior to the expiration date
2. The LRA may require, as a condition for renewal of Customs Broker license, a refresher training and/or examination to enhance knowledge and efficiency in the practice of the profession
3. Must be tax compliant in order to qualify for any renewal of License as evidence by a valid current tax clearance
4. Must have a good practice conduct as determined by the LRA based on practice history records in the ASYCUDA database and the Disciplinary Guide.
5. Must not be engaged in any conduct that would justify the suspension or disbarment of his or her professional license as enshrined in the LRA Customs Brokers License Disciplinary Guide.

**11.0 Right to Administrative Review and Appeal for Denied Applicants**

If an applicant’s license application is denied by the LRA, the applicant shall:

1. Have a right to an administrative review of the denial provided the applicant files for review within ten (10) working days of the denial
2. The request for Administrative Review shall be submitted to the LRA Objection and Protest Panel in the Office of the Chief Counsel
3. The Objection and Protest Panel shall complete its review and submit it to the Commissioner General (CG) for a final determination within sixty (60) days of the denied applicant’s request for administrative review
4. At the completion of the administrative review, the applicant shall receive a final determination of the Commissioner General within the meaning of Section 70 of the LRC
5. Pursuant to LRC Section 59, the applicant may appeal the CG’s determination to the Board of Tax Appeals (BOTA)
6. If the CG’s final determination is unfavorable to the applicant, the denied applicant has the right to appeal the CG’s final determination or decision to the Board of Tax Appeals (BOTA) within thirty (30) days from the date of notice of the determination within the meaning of LRC Section 71
7. If the denied applicant fails to appeal within the aforementioned thirty (30) day period, the decision of the CG becomes final and binding upon the denied applicant pursuant to Section 70 (c) of the LRC.
8. After the close of Hearing at BOTA, either party may appeal the BOTA’s determination to the Tax Court
9. A decision of the Tax Court may be subsequently appealed to the Supreme Court of the Republic of Liberia

**12.0** **Right to a Hearing for Alleged Violation of Professional Misconduct (s)**

When an alleged violation of Professional misconduct is reported, the LRA OPRS shall:

1. Notify the Customs Broker in writing to appear and answer the complaint at a Hearing in the LRA OPRS within ten (10) working days from the date of service of such notice
2. The Customs Broker may be represented by counsel or by someone qualified to practice before the LRA or may opt for self-representation at said hearing.
3. A determination shall be made in accordance with **Sections 15.0, 16.0 and 17.0** of this regulation within thirty (30) days from the date of appearance of the Practitioner before the LRA OPRS
4. If a Customs Broker is served a Notice for alleged violation or misconduct and fails to appear to answer the complaint within ten (10) working days, a warning communication letter/email will be sent to the Broker to appear within five (5) working days from the date of the warning letter/email. If the Customs Broker fails to appear, a determination shall be made without a Hearing wherein it would be noted that the Broker failed to take advantage of the administrative due process afforded the Customs Broker

**13.0 Right to Review and Appeal for Suspended or Revoked Licenses**

When a determination is made by the OPRS to suspend or revoked a Customs Broker’s License in cases involving violation of professional misconduct (s) the Broker may:

1. Protest the OPRS’s decision through the Objection and Protest Panel of the Office of the Chief Counsel to the Commissioner General for a final determination
2. The Customs Broker’s protest must be filed within ten (10) days of the OPRS’s decision being given to the Customs Broker or the Broker’s representative
3. The final determination shall be made by the Commissioner General within sixty (60) days of the Broker filing of a protest, which determination the Broker may appeal to the Board of Tax Appeals (BOTA) within thirty (30) days from the Notice of Determination provided in LRC Section 71
4. After the close of Hearing at BOTA, either party may appeal BOTA’s ruling to the Tax Court
5. A decision of the Tax Court may be subsequently appealed to the Supreme Court of the Republic of Liberia

**14.0 Professional Duties and Obligations**

The following list of a Customs Broker’s professional duties and obligations is indicative and not exhaustive.

1. **Due Diligence.** A licensed Customs Broker shall exercise utmost due diligence in preparing, filing, and processing Customs documentations/submissions on behalf of a client, and in determining the correctness of representations made to his/her client or to the LRA.
2. **Competence**. A licensed Customs Broker shall have the appropriate and adequate professional knowledge, and experience, for service engagements undertaken.
3. **Conflicts of Interest**. A conflict of interest exists, inter alia, if a licensed Customs Broker’s representation of a client is likely to adversely affect the interest of another of the Broker’s client or the interest of the Broker. A conflict of interest also exists if there is a significant risk that representing a client will be materially limited by your responsibilities to another client, a former client or a third party, or by your personal interests. When a conflict of interest exists, a Customs Broker may not represent a client in an LRA matter.
4. **Confidentiality.** A licensed Customs Broker has the obligation to keep all information obtained from client confidential except where:
5. It is requested by LRA
6. Disclosure is permitted by law
7. The information became public through no fault of the Broker
8. The client gives a prior written consent for disclosure
9. It is required by a court of competent jurisdiction for the purpose of prosecuting a person who has committed revenue, tax or criminal violations or offenses
10. In court proceedings to establish a tax payer tax liability, responsibility for tax violations or offenses in a criminal case, and
11. Disclosure is made to employees or authorized persons of the LRA in the course of and for the purpose of carrying out their official duties.
12. **Customs Related Tax Return Positions.** A licensed Customs Broker shall not sign Customs related tax return or refund claim or advise a client to take a position on any Customs related tax return or/and refund claim that the Broker knows or should know contains a position:
13. For which there is no reasonable basis in law or fact;
14. Which is tantamount to a willful attempt to understate, avoid, or evade tax liability, or
15. Which represents a reckless or intentional disregard of Tax rules or regulations
16. The Customs Brokers must make a full disclosure to a client of the position taken and the anticipated effects which may include, inter alia, anticipated refund, anticipated balance due, and likely penalty
17. **Written Tax Advice**. In providing written advice concerning any Customs duties and tax matters, a licensed Customs Broker shall (i) base the advice rendered on reasonable lawful assumptions (ii) use the LRC and the regulations promulgated thereunder as well as any other relevant and applicable law and regulation as a basis for rendering said advice (iii) reasonably consider all relevant facts that the Broker knows or should know and (iv) use reasonable efforts to identify and ascertain the relevant facts.
18. **Errors and Omissions**. If a licensed Customs Broker knows that a client has not complied with the LRC or the LRA Act, or any applicable or relevant laws affecting tax matters or has made an error or omission in any return, declaration, affidavit, or other document which the client submitted or executed pursuant to the LRC or LRA ACT or regulations promulgated thereunder, the Customs Broker shall promptly inform the client of that noncompliance, error, or omission and advise the client of the consequences under the Code, LRA ACT, or other relevant rules and regulations of said non-compliance, error, or omission, and keep records of such notification provided the client..
19. **Furnishing Information to the LRA**. If a licensed Customs Broker receives a proper request for information from the LRA, the Customs Broker shall promptly submit the requested information in accordance with Section 55 of the LRC.
20. **Handling Matters Promptly**. A licensed Customs Broker shall not unreasonably delay the prompt disposition of any matter before the LRA. This applies with respect to responding to your client as well as to LRA personnel. A licensed Customs Broker shall not advise a client to submit any document to the LRA for the purpose of delaying or impeding the administration of the LRC or LRA Act or the regulations promulgated thereunder or any other relevant and applicable laws.
21. **Client Records**. On request of a client, a licensed Customs Broker shall promptly return any records of a client necessary for the client to comply with its tax obligations to the LRA and by extension to the Government of Liberia in accordance with Section 55 of the LRC.
22. **Solicitation.** With respect to any matter before the LRA, a licensed Customs Broker shall not solicit money, materials, or services for or on behalf of the LRA or its staff for the exercise of its duties and responsibilities under the provisions of the LRC and related laws. Nor should a licensed Broker give any gift, cold water, Saturday, money or bribe to any LRA staff or agents.
23. **Negotiating Checks**. A licensed Customs Broker shall not endorse, negotiate, electronically transfer, or direct the deposit of any government check relating to a LRA tax refund or payment that is not for the Broker. A licensed Customs Broker shall not direct or accept payment from the LRA or the government of Liberia to a taxpayer into an account owned or controlled by the Broker unless the Broker has a legal power of attorney or other written legal authorization from the client.
24. **Personal Tax Compliance Responsibilities**: A licensed Customs Broker is responsible for ensuring the timely filing and payment of his/her personal income tax returns and the tax returns of any entity over which the Broker has or shares control. Failing to file income tax returns or employment/service/excise tax returns is considered disreputable and incompetent conduct for which a Broker may be summarily suspended, indefinitely and/or permanently bar from practicing before the LRA. The willful evasion or avoidance of the assessment or payment of tax is a serious violation and a professional misconduct that may be subject to the aforementioned sanctions.
25. **Books and Records**: All licensed Customs Brokers shall be required to maintain their records in accordance with Section 55 of the LRC and the regulations promulgated thereunder.
26. **The Offering of Gratuity**: No licensed Customs Broker or anyone acting on behalf of a licensed Customs Broker shall offer or pay directly or indirectly to any LRA employee or anyone acting on behalf of an LRA employee or any employee within the employed of any MAC, gratuity of any kind whether or not it could reasonably be expected to directly or indirectly influence the LRA employee’s official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the LRA employee or anyone acting on behalf of the LRA employee.
27. **Publishing of Fees for Clearing and Forwarding of Cargo**: All licensed Customs Brokers practicing before the LRA shall publish on its website and/or offices, and the websites of the Ministry of Commerce and Industry (MoCI), the Liberia Chamber of Commerce (LCC) and the Inspection Company, and any other website deemed necessary, their Fee Schedule which shall contain the maximum fees they will charge customers for any service in the clearing and forwarding of cargo in their behalf. Without prejudice to the foregoing, licensed brokers shall have no restriction on the minimum fee they may charge for their services. Such fees may be amended upwards or downwards at any time provided that a licensed Customs Broker practicing before the LRA notifies the LRA and publishes the new schedule of fees one month prior to the effective date

**15.0 Specific Violations**

The following list of specific violations is indicative and not exhaustive. A broker commits a specific violation if the broker -

1. Contravenes the provisions of legislation or regulation relating to the import or export of goods.
2. Contravenes the LRC
3. Acts in a manner likely to defraud the Government of the Republic of Liberia or a client such as smuggling, false invoicing, under declaration, false declaration, tax evasion, tax avoidance etc
4. Conspires with others in planning to defraud the Government of the Republic of Liberia
5. Fails to comply with this regulation and related laws.
6. Becomes financially insolvent or bankrupt.
7. Commits or is involved in any criminal activity whilst licensed as a Customs Broker
8. Fails to maintain a current tax clearance
9. Is no longer qualified under this regulation

**16.0 Range of Sanctions for Violation of the Professional Duties and Obligation and for committing any of the Specific Violations**

The LRA may censure, suspend, revoke the license of, or disbar any Customs Broker, from practicing before the LRA if the individual is unethical, incompetent, disreputable, or fails to comply with any tax or revenue related regulations including this regulation or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client.

The LRA may also imposed a monetary penalty for an individual, and/or the employer of any individual subject to this regulation if (i) the violations occurred in connection with the individual’s activities on behalf of the employer and (ii) the employer knew or reasonably should have known of the individual’s conduct.

The LRA shall issue a Customs Brokers’ Disciplinary Guide to manage the sanctioning regime. Customs Brokers will have the right to appeal any decision as stipulated in **Section 12.0** of this regulation.

**17.0 Role of the National Customs Brokers Association**

1. A majority of licensed customs brokers may establish or continue the existing National Customs Brokers Association
2. The National Customs Brokers Association may have input into the design and content of the licensing examination
3. The National Customs Brokers Association may have a role in the preparation or training for the customs broker examination
4. In order to protect the client’s interest, the National Customs Brokers Association of Liberia must establish customized domestic standards of best practice on a national basis, taking into account international and ECOWAS region best practices
5. The National Customs Broker Association should establish a code of professional conduct for its members and a means of monitoring and recording compliance and misconduct in a transparent auditable, verifiable, and fair manner

**18.0 Once licensed, Customs Brokers Must Follow the Following Best Practice**:

1. Customs Brokers must demonstrate continuing financial stability.
2. Customs Brokers must remain tax compliant
3. Customs Brokers must demonstrate high level of professional competence and integrity at all time
4. Customs Brokers must be in compliance with the LRC, regulations promulgated thereunder and related laws

**19.0 Prohibition**

All employees of the LRA are prohibited from providing Customs Broker services as defined in this regulation and as stipulated in the LRA Code of Conduct while in the employ of the LRA.

**20.0 Transitional Provision**

Within six months of coming into effect of this regulation, all existing Customs Brokers will be required to renew their license.

A person currently carrying on business as a custom broker who does not satisfy all of the licensing requirements established herein and/or fails to obtain an applicable customs broker license shall be prohibited from carrying out customs brokers activities before the LRA or in any way and at any place within the Republic of Liberia. For the avoidance of doubt, no one shall be prohibited from carrying on any customs broker activities for reason of lack of license until the last day of the sixth month as of the Effective Date of this Regulations.

**21.0 EFFECTIVE DATE**

This Regulation shall become effective one (1) month as of the date of its signature by the Commissioner General and publication by the Ministry of Foreign Affairs.

Signed\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Elfrieda Stewart Tamba (Mrs.)

COMMISSIONER GENERAL/CEO