

LEGAL NOTICE NO.

THE EXCISE DUTY ACT

(No. 23 of 2015)

IN EXERCISE of the powers conferred by section 45 of the Excise Duty Act, 2015, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations—

THE EXCISE DUTY (AMENDMENT) REGULATIONS, 2023

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| Citation. | <p>1. These Regulations may be cited as the Excise Duty (Amendment) Regulations, 2023.</p> |
| | <p>2. Regulation 2 of the Excise Duty Regulations, 2020 hereinafter referred to as the principal Regulations, is amended by inserting the following interpretations: -</p> <p>“Co-manufacture” means any partial process in the production of excisable goods by use of an automated production line</p> |
| L.N. 113/2020. | <p>Regulation 3 of the Excise Duty Regulations, 2020 hereinafter referred to as the principal Regulations, is amended in paragraph (1) by inserting immediately after the “Commissioner may require” the words “and where applicable;”</p> |
| | <p>3. Regulation 4 of the Excise Duty Regulations, 2020 hereinafter referred to as the principal Regulations, is amended:-</p> <p>1. in the paragraph (1) by deleting sub-paragraph (a)-(d) and inserting the following new sub paragraph –</p> <p>(a) the importation or manufacture of cigarette paper or cigarette packaging materials;</p> <p>(b) the importation of raw or unprocessed tobacco;</p> <p>(c) the local purchase or importation of ethanol; and</p> <p>(d) the denaturing of spirits.</p> <p>(e) the importation or manufacture of packaging material for products containing nicotine or nicotine substitutes</p> |
| | <p>4. Regulation 4(2) of the Excise Duty Regulations, 2020 hereinafter referred to as the principal Regulations, is amended:-</p> <p>2. Introduce a new Paragraph 4(2)(a) immediately after Paragraph 4(2) as follows-</p> <p>4(2)(a) Only agents of licensed importers or manufacturers of products containing nicotine or nicotine substitutes shall be registered by the Commissioner as importers of packaging materials of products containing nicotine and nicotine products.</p> |

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| | <p>5. Regulation 12 of the Excise Duty Regulations, 2020 hereinafter referred to as the principal Regulations, is amended by introducing the following new Paragraph 12(1)(A) immediately after Paragraph 12(1) –</p> <p style="padding-left: 40px;">12(1)(A) ‘A co-manufacturer shall keep the raw materials or intermediate goods used for the co - manufacture separately to allow for the accounting of the materials in the factory’</p> |
| | <p>6. Regulation 13 of the Excise Duty Regulations, 2020 hereinafter referred to as the principal Regulations, is amended by introducing the following new Paragraph 13(3)(A) immediately after Paragraph 13(3) –</p> <p style="padding-left: 40px;">13(3)(A) ‘Excisable goods in an excise stock room for the co-manufacture shall be stored separately, in such a manner as to facilitate the accounting of the goods therein’.</p> |
| | <p>7. Regulation 15 of the Excise Duty Regulations, 2020 hereinafter referred to as the principal Regulations, is amended in paragraph 15(1)(a) by adding (ix) as follows: -</p> <p style="padding-left: 40px;">(ix) ‘In relation to locally manufactured excisable goods under a co-manufacturing agreement;</p> <p style="padding-left: 80px;">i) detailed records of raw materials received and removed from their premises</p> <p style="padding-left: 80px;">ii) production records at every stage of the manufacturing process;</p> <p style="padding-left: 80px;">iii) packaging materials received and utilized in their premises;</p> <p style="padding-left: 80px;">iv) details of goods removed from the factory</p> <p style="padding-left: 80px;">v) readings of measuring and metering devices for each co-manufacture production run</p> |
| | <p>8. Regulation 38 of the Excise Duty Regulations, 2020 hereinafter referred to as the principal Regulations, is amended in paragraph 38(3)(b) by adding the words “as an importer” immediately after the word “the authorised regulator.”</p> |
| | <p>9. The principal regulation is amended by inserting new schedules immediately after the fourth schedule:</p> <p style="text-align: center;">Fifth Schedule - minimum specifications for metering, measurement and monitoring devices</p> <p>1. Each metering and measuring device shall –</p> <p style="padding-left: 40px;">a) measure individual and cumulative volumetric flows in litres;</p> <p style="padding-left: 40px;">b) have a cumulative totaliser with a rollback counter;</p> <p style="padding-left: 40px;">c) have a capability for electronic data transmission and support remote communication;</p> <p style="padding-left: 40px;">d) be tamper proof; and</p> <p style="padding-left: 40px;">e) conform to the requirements of the Weights and Measures Department for alcohol and alcoholic beverages.</p> <p>2. The installation of each metering, measuring and monitoring device shall be carried out in strict compliance with the requirements issued by the Commissioner upon inspection of the manufacturing plant.</p> |

3. Each metering and measuring device shall be of the type approved for alcoholic beverages by the Weights and Measures Department.
4. Each metering and measuring device shall be verified by the Weights and Measures Department upon installation.
5. The monitoring system shall –
 - a) be based on a non-proprietary open architecture that supports ONVIF open standard protocol for both the cameras and Network Video Recorders (NVR).
 - b) have access to the internet to facilitate remote viewing and transmit data in real-time;
 - c) have an Internet Protocol (IP) camera with clear resolution;
 - d) operate every day on a twenty-four-hour continuous basis. The licensed manufacturer shall take measures to ensure that the monitoring devices operate uninterrupted and, for this purpose, shall install appropriate power backup systems;
 - e) have the capability to store data on continuous recording for at least ninety days at the licensed manufacturer's premises;
6. The licensed manufacturer shall, upon inspection by the Commissioner, install;
 - a) Internet Protocol (IP) cameras in all areas required by the Commissioner;
 - b) a combination of monitoring devices with IP cameras that have the capacity for infrared night vision, three hundred and sixty degrees rotating view and the ability to view the distance required by the Commissioner.
7. The metering, measuring and monitoring devices shall be installed within six months of the publication of this notice.
8. Legal Notice No. 69 of 2011 issued on 4th April 2011 shall stand revoked six months after publication of this notice.

Sixth Schedule

PART I - specification for the Custody Transfer Metering Systems

| | Requirements for the device |
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| Flowmeter ; | <ol style="list-style-type: none">1) Shall be of a model type approved by the Director of the Department of Weights and Measures for the measurement of alcohol.2) Shall be of accuracy class 0.5 or 0.3.3) Shall be capable of attaining accuracy of within (+/-) 0.25%.4) Installation shall be such that there should be no flow through the flowmeter when it is off through the installation of a valve. For this purpose, the licensed manufacturer shall install a valve to the flow meter.5) Shall have the capability for remote communication through a Modbus Communication interface6) Data transmission software shall be validated by Weights and Measures before being offered for deployment.7) Installation shall be undertaken by a Weights and Measures licensed company under the type 7 category and submitted to Weights and Measures for verification before use.8) The relevant International Organization of Legal Metrology (OIML) approvals for the flowmeter models shall be a basic requirement for the submitters of the instrument models to be approved by the Weights and Measures Department.9) Shall be food-grade compliant.10) The licensed manufacturer shall obtain and maintain a valid certificate of verification from the Weights and Measures Department, and it shall be the duty of the licensed manufacturer to submit the flowmeter annually to the Weights and Measures Department for subsequent verification and stamping whenever it falls due. |

**PART II - specifications for custody transfer tank gauging systems
(Automatic Level Gauges and Automatic Tank Gauges)**

| | Requirements for the device |
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| Automatic Tank Gauges (ATG) | <ol style="list-style-type: none">1) The ATG shall be of a model type approved by the Director of the Department of Weights and Measures for the measurement of alcohol.2) The ATG accuracy shall attain an accuracy of (+/-) 1mm.3) Shall have a type-approved computing system for determining custody transfer volumes in the tanks (type approved) by the Department of Weights and Measures.4) The computing system shall be capable of remote communication through a Modbus communication interface.5) Data transmission software shall be validated by Weights and Measures before being offered for deployment.6) The tanks on which are to be fitted the ATGs shall be calibrated by a Weights and Measures licensed company under the type 8 category and submitted to Weights and Measures for verification before use.7) Installation shall be undertaken by a Weights and Measures licensed company under the type 8 category and submitted to weights and Measures for verification before use.8) Components of the ATG enclosed within the tank shall be food-grade compliant.9) The ATG and the volume computing unit model's relevant OIML approvals shall be a basic requirement for the submitters of the instrument models to Weights and Measures for type approval.10) The licensed manufacturer shall obtain and maintain a certificate of verification by the Weights and Measures Department, and it shall be the duty of the licensed manufacturer to submit the ATG measurement system annually to the Weights and Measures Department for subsequent verification and stamping whenever it falls due. |

PART III - specifications for the Monitoring System (Remote Factory Viewing Closed Circuit System)

1. The System should be equipped with H.265+ compression-based Smart Video Analysis, IP Video surveillance system incorporating features and functions of Video Analytics, Lowest space consumption, Early alert management, Motion Detection, System Alarm, Network Alarm, Low Light Colour Image with the following components of:
 - a) IP Fixed Dome & Bullet Camera
 - b) Network Video Recorders
 - c) LED Display Monitors
 - d) Network Switches
 - e) Video management Software built-in NVR.
 - f) Connectivity to the internet for Remote Access
2. Entire System must be an IP surveillance system capable of generating 25/30 fps on each stream for viewing on LAN/WAN or over the internet. The NVRs should support Video & Audio Stream Recording and should have the capability to record 25/30fps with up to 4K Input Camera Resolution for each Channel.
3. The System shall be based on non-proprietary open architecture that supports ONVIF open standard protocol for both the cameras and Network Video Recorders.
4. The System should support different types of video analytics such as face detection, people counting, object detection, crowd detection, tripwire, perimeter, scene and de focus detection, motion.
5. The cameras and switches must support POE.
6. The NVR must be connected to the internet to allow remote monitoring by the Commissioner of domestic taxes.
7. The system should be equipped with an uninterrupted power supply for continuous system uptime.

Made on the _____, 2023.

NJUGUNA NDUNG'U,
*Cabinet Secretary for
the National Treasury and Economic Planning.*