



# The real risk of customs non-compliance to your company

**D**isruption and loss resulting from inadequate or failed customs procedures, systems or policies, customs employee errors or customs systems failures, can have a huge impact on your business.

Companies often make the mistake of thinking that Customs formalities are merely "admin", the result being that many functions are allocated to the most junior personnel, without

management having a full understanding of the importance or consequences of what is involved. For instance, it is crucial to keep accurate registers for customs warehouses or rebate stores, but time and again these are left to people without adequate knowledge and without the registers periodically being checked or audited. An entry clerk, simply left to frame entries, for which payment received is nominal, may not be aware that he/she may be dealing with high value/high risk commodities.



There are many victims out there that can vouch for the fact that the cost of unknown non-compliance can be devastating.

— QUINTUS VAN DER MERWE

Someone without a proper understanding of matters might think that little harm might come from allowing a third party transporter to use a company's road bond (reputable company providing upfront payment), until the

goods are diverted and Sars calls for full value of the goods for forfeiture, as well as duty and VAT.

Licensing and registration is another potential area of risk, as is a lack of understanding of the processes allowed or to be followed for either rebate stores or the variety of species of Customs warehouse.

Frequently, issues arise out of change of ownership of goods or where goods are subjected to a process or to handling that is not allowed. This prejudices their status as "bonded goods" and causes Sars to assert that duty and VAT must now be brought to account, together with penalties and potentially an amount of money in lieu of forfeiture.

On many an occasion, personnel ask Sars if they can do something, which a particular official allows, only for the company to later be told that such action is unlawful. It is imperative that you have permission in writing, otherwise such approval is meaningless. One can also not raise the fact that Sars did not pick up a discrepancy in an earlier audit as an excuse; ignorance of the law does not fly.

So, what is the real risk of customs non-compliance to your company? There are many victims out there that can vouch for the fact that the cost of unknown non-compliance can be devastating. Delays in the release of imported goods can run into thousands of rands in storage, demurrage, late delivery penalties or even cancelled contracts. Sars can seal premises pending an audit or remove computers and phones to download information, leaving businesses crippled pending finalisation. Product lines can become unprofitable because of unforeseen costs or consequences and directors/management can find themselves faced with demands in their personnel capacities in terms of section 103 of the Customs Act.

It is imperative that

management fully understands the business risks, given that the Customs Act is self-regulatory. Customs compliance goes hand in hand with operational risk and, as such, companies need to ensure top-down knowledge of required compliance areas and the correct level of expertise for proper implementation and fulfilment of responsibilities.



By Quintus van der Merwe, head of international transport, trade & energy at Shepstone & Wylie Attorneys

## Helping to build customs compliance capacity

Never before has the global trading, shipping, clearing and customs community experienced such a radical change and complete legislative overhaul in the landscape of Sars customs compliance, says GMLS managing director Mark Goodger.

"The new Customs Acts clearly define the new concepts of "self compliance and self determination".

"Sars is in fact going a step further and has introduced measures to directly assess and examine the skill and capacity of people conducting customs business with them. This applies to all traders in the preferred trader programme (PT) as well as customs brokers (as clearing agents will be known under the new Act)."

What stands out, however, is the fact that the basics of HS classification, valuation and origin remain the same, says Goodger. "Yet this professional expertise is only retained through a few remaining experts in the field, and the general majority of those performing customs compliance are reduced to data typists."

Through its WCO, ICC and INCU expertise, GMLS is committed to ensuring that this training and capacity is revived, says Goodger. "In collaboration with its university partners, GMLS aims to introduce accredited customs compliance certificated courses at all levels."



# CHANGE

is inevitable

Stay abreast of customs modernisation changes with **EASYCLEAR**

