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CLERK-AT-THE-TABLE:	R. U. TAMATI



Paper laid by Chairman Trade, Industry & Cooperatives on Thursday 31st March, 2022.

[Signature]

THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – SIXTH SESSION



DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES

REPORT ON THE CONSIDERATION OF THE NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM BILL (NATIONAL ASSEMBLY BILL NO. 15 OF 2021)

The Directorate of Departmental Committees
Clerk's Chambers
Parliament Buildings
NAIROBI

March, 2022



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CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings on the consideration of the National Electronic Single Window System Bill (National Assembly Bill No. 15 of 2021) published on **30th April 2021** was read a First Time on **Tuesday, 8th June 2021**. The Bill was thereafter committed to the Departmental Committee on Trade, Industry and Cooperatives, pursuant to Standing Order 127.

The Bill seeks to provide for the establishment and operationalization of the National Electronic Single Window System in order to facilitate trade, establishment of the Kenya Trade Network Agency and to provide for electronic transactions.

Further, the Bill endeavours to establish a National Electronic Single Window System known as the Kenya TradeNet; which shall serve as the single-entry point and a platform for persons involved in international trade to:

- i. Lodge import and export documents electronically, for processing & approval; and
- ii. Facilitate electronic payments for transactions lodged through the system.

It seeks to provide efficiency in trade transactions by providing a central platform where traders can get services and permits from all government agencies involved in international trade by making applications through one single system. It also ensures standardization of trade documentation and processes, ensuring faster processing of trade documentation.

Additionally, the Bill seeks to provide that the system shall be administered by the Kenya Trade Network Agency whereas other government agencies are expected to cooperate with the Agency. The system can also be utilized for domestic trade transactions where applicable.

The Committee also noted that the TradeNet system has been in operation under KenTrade since 31st October 2013. One of the key challenges however faced by the Agency in fulfilling its mandate of managing and implementing the System has been lack of a strong legal framework backed by legislations establishing it and setting out its mandate and powers.

Following placement of adverts in the print media on 11th June 2021 requesting for comments on the Bill from members of the public and relevant stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received one memorandum from Kenya Revenue Authority (KRA).

In a bid to carry out further stakeholder engagement, the Committee invited the National Treasury and Planning vide a letter Ref: NA/DDC/TRADE/2022/008 dated 2nd March 2022 for an engagement on the Bill, since the implementors of the National Electronic Single Window System, Kenya Trade Network Agency (KenTrade), is an agency under it.

The Committee also invited the Ministry of Industrialization, Trade and Enterprise Development vide a letter Ref: NA/DDC/TRADE/2022/009 dated 2nd March 2022. The Cabinet Secretary, vide a letter Ref: MOITED/SDT/1/95/152 dated 15th March, 2022 forwarded the Ministry's statement, noting that the establishment and implementation of the Bill upon enactment will lead to Kenya fulfilling most of the requirements of the provisions of

the World Trade Organisation (WTO) Trade Facilitation Agreement, where Kenya is a signatory to.

The Cabinet Secretary, Ministry of Industrialization, Trade and Enterprise Development however noted that the Bill duplicates some roles of the State Department for Trade and Enterprise Development as outlined in the Executive Order No. 1 of 2020. Further, that the Bill also proposes the Agency to undertake functions being handled by other government departments and agencies.

The Kenya Revenue Authority (KRA) vide a letter Ref: KRA/5/1002/5(7042) noted that the Bill required amendments in various sections to avoid conflict of roles between the implementing Agency (KenTrade) and other government institutions. The Authority further stated that the Bill, as currently drafted, will greatly undermine the effectiveness of KRA in the role of revenue mobilization, border security and trade facilitation.

All the stakeholders' comments were put into consideration while preparing the proposed Committee's amendments and some of the proposals were adopted forming part of the proposed Committee's amendments.

On behalf of the Departmental Committee on Trade, Industry and Cooperatives and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the National Electronic Single Window System Bill, 2021. The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank all stakeholders who submitted their comments on the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the National Electronic Single Window System Bill, 2021 and have the honour to report to the National Assembly with recommendation that the Bill to be **approved with amendments**.

Hon. Adan Haji Ali, M.P.
Chairperson, Departmental Committee on Trade, Industry and Cooperatives

PART I

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Trade, Industry and Cooperatives is one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:
 - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
 - iii. **To study and review all the legislation referred to it;**
 - iv. *To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - v. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);*
 - vii. *To examine treaties, agreements and conventions;*
 - viii. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - ix. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - x. *To examine any questions raised by Members on a matter within its mandate.*

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, trade, including securities exchange, consumer protection, pricing policies, commerce, industrialization including special economic zones, enterprise promotion and development including small and medium-size enterprises, intellectual property, industrial standards, anti-counterfeit policies and co-operatives development.
3. In executing its mandate, the Committee oversees the Ministry of Industrialization, Trade & Enterprise Development and the State Department of Cooperatives.

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Trade, Industry and Cooperatives was re-constituted by the House in July, 2020 and comprises of the following Members:

Chairperson

Hon. Adan Haji Ali, MP
MP for Mandera South Constituency
Jubilee Party

Vice-Chairperson

Hon. Wangari Mwaniki, MP
MP for Kigumo Constituency
Jubilee Party

Members

Hon. William Cheptumo, MP
MP for Baringo North Constituency
Jubilee Party

Hon. Kareke Mbiuki, CBS, MP
MP for Nithi Constituency
Jubilee Party

Hon. Anab Mohamed Gure, MP
MP for Garissa County
Jubilee Party

Hon. Andrew Mwadime, MP
MP for Mwatate Constituency
ODM Party

Hon. Christopher Doye Nakuleu, MP
MP for Turkana North Constituency
Jubilee Party

Hon. Daniel Maanzo, EBS, MP
MP for Makueni Constituency
WDM-K Party

Hon. Jared Okelo, MP
MP for Nyando Constituency
ODM Party

Hon. Sharif Athman Ali, MP
MP for Lamu East Constituency
ODM Party

Hon. Jones Mlolwa, MP
MP for Voi Constituency
ODM Party

Hon. Kipruto Moi, MP
MP for Rongai Constituency
KANU Party

Hon. Khatib Mwashetani, MP
MP for Lunga Lunga Constituency
ODM Party

Hon. Robert Gichimu, MP
MP for Gichugu Constituency
Jubilee Party

Hon. Kimani Patrick Wainaina Jungle,
MP
MP for Thika Town Constituency
Independent

Hon. Fred Ouda, MP
MP for Kisumu Central Constituency
ODM Party

Hon. Ngugi Joseph Nduati, MP
MP for Gatanga Constituency
Jubilee Party

Hon. Wachira Rahab Mukami, MP
MP for Nyeri County
Jubilee Party

Hon. (Dr.) Wilberforce Oundo, Phd, MP
MP for Funyula Constituency
ODM Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Members of the Secretariat:

Ms. Christine Ndiritu
Clerk Assistant II

Ms. Nuri Kitel Nataan
Clerk Assistant II

Ms. Marlene Ayiro
Principal Legal Counsel II

Ms. Winfred Kizia
Media Relation Officer III

Mr. Joseph Ndirangu
Fiscal Analyst I

Ms. Rahab Chepkilim
Audio Officer

Mr. Chelang'a R. Maiyo
Research Officer II

Mr. Richard Sang
Serjeant-At-Arms

PART II

2 OVERVIEW OF THE NATIONAL ELECTRONIC WINDOW SYSTEM BILL, 2021

2.1 ANALYSIS OF THE BILL

6. The National Electronic Window System Bill, 2021 seeks to provide a framework to facilitate trade and commerce using the National Electronic Single Window System. This is done through the establishment of the National Electronic Single Window System and prescribing a framework for its operations. The Bill seeks to establish a National Electronic Single Window System known as the Kenya TradeNet.
7. The Electronic System allows parties involved in trade and transport to lodge standardized information and documents with a single-entry point to fulfil all import and export related regulatory.
8. It provides efficiency in trade transactions by providing a central platform where traders can get services and permits from all government agencies involved in international trade by making applications through one single system. It also ensures standardization and faster processing of trade documentation.
9. Some of the perceived benefits of introducing this system will include –
 - i. Reduction in the average number of processes;
 - ii. Reduction in the number of documents required;
 - iii. Adopting to the green or paperless environment;
 - iv. Electronic processing and confirmation of payments;
 - v. Increased compliance;
 - vi. Reduction of time wastage and providing for ease of doing business;
10. To implement the system, Kenya Trade Network (KenTrade) was established under the National Treasury and Planning through Legal Notice No. 6 of 2011 to among others, implement, policies relating to the System and integrate electronic systems of public and private entities involved in receipting, processing and approving documents relating to international trade transactions.

2.2 REVIEW OF THE NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM BILL, 2021

11. The National Electronic Single Window Bill, 2021 contains forty-two (42) clauses which seek to provide a legislative framework for a national electronic window system to among others -
 - i. facilitate single point of submission and receipt of trade data and information;
 - ii. enable synchronized processing of data and information;
 - iii. enable standardization of documents and single decision making for customs release and clearance;
 - iv. facilitate electronic transactions cross border trade and remove legal and operational barriers to electronic transactions;
 - v. facilitate coordination and partnership among department responsible for customs and other relevant line ministries, agencies, and industry players dealing with international trade and trade facilitation.
12. Clause 6 of the Bill gives legal effect and provides clarity in terms of coordination between Ministries, Departments & Agencies and industry players within the Agency. This is to ensure harmonization of information between different key players in the trade industry. It further provides for mechanisms to ensure that the Agencies dealing with the System maintain its integrity and security.
13. As relate to the technical aspects of the System; Clause 7 (1) of the Bill obligates the Agency to adopt relevant internationally accepted standards, procedures, documents, technical details and formalities for the effective implementation of the System.
14. The processes and technical aspects of the system shall conform to the principles set out in Clause 7(2) of the Bill; these principles are fundamental to enhancing effectiveness, efficiency and sustainability of the system in providing seamless conduct of business among parties and other government agencies.
15. The Bill designates the Agency as the national lead agency and will be required to collaborate with regional and international agencies or entities; the agency is charged with the responsibility of undertaking registration of system users and prescribe requirements for registration and deregistration of system users.
16. Part III of the Bill provides for the measures to enhance improvement on the certainty on the electronic information and electronic communication in the system noting that the system wholly relies on Information communication technology in its operation hence the desire to build public confidence and integrity using safe and reliable electronic records as well as having legal backing.
17. Aware that the Agency will be responsible for electronic transactions relating to trade; it shall otherwise be subject to the provisions of Part VI(A) of the Kenya Information and

Communication Act, 1998 or any other law relating to electronic transactions and cyber security, including the Computer Misuse and Cyber Security Act.

18. Clause 23 (1) establishes the Kenya Trade Network Agency which shall be body corporate with perpetual succession and head quartered in Nairobi.
19. Clause 24 of the Bill provides for the functions of the Agency which among others is to establish and manage the system and to facilitate trade, implement policies relating to the system and integrate electronic systems of public and private entities involved in receipting, processing and approving of documents relating to international trade transactions.
20. The agency will be administered by Board of Directors headed by a non - executive chairperson appointed by the president and a secretariat under the Chief executive Officer appointed under Section 28 of the Bill. The Board shall be responsible for the administration, management and development of the Agency.
21. Part V of the Bill set out the financial provisions of the Agency, source of funds and the preparation of budget estimates and other financial statements in accordance with the provisions of the Public Finance Management Act, 2012.
22. Further, Clause 33(3) of the Bill provide for the audit of the agency accounts; the accounts of the Agency shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2015.
23. Part VI of the Bill prescribe the general provisions applicable in the implementation of the system including copyrights issues, security of the system, sanctions and general penalties. Also, Clause 39 designates the Cabinet Secretary in consultation with the Agency to make regulations generally for the better carrying out of the purposes and objectives of the Act.
24. Upon enactment of the Bill, the Kenya Trade Network Agency Order, 2010 is revoked and all rights, obligations and contracts shall be vested in the new Agency and Board.
25. Further, enactment of the Bill will cause additional/ consequential amendments to other Acts of Parliament to ensure clarity in implementation, conformity and application of electronic transaction. The Acts to amended in the specified Manner are in schedule S.42 of the Bill.
26. The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution as it contains provisions that affect their functions and powers. Paragraph 7 of Part II of the Fourth Schedule to the Constitution designates trade development and regulation as a devolved function.
27. This Bill is a money Bill within the meaning of Article 114 of the Constitution. The establishment of the National Electronic Single Window System and the Kenya Trade Network Agency as well as other structures will occasion additional funding that will be appropriated in the budgetary arrangement of MDAs through annual estimates.

PART III

3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

28. Following the call for memoranda from the public through the placement of adverts in the print media on **Friday, 11th June 2021** requesting for comments from the public on the Bill and invitation of stakeholders vide letters Ref: NA/DDC/TRADE/2022/008 and Ref: NA/DDC/TRADE/2022/009 dated 2nd March 2022 for a stakeholder engagement meeting on the Bill which was held on Thursday 10th March 2022, the Committee received memoranda from the following stakeholders:

- i. The National Treasury and Planning
- ii. Ministry of Industrialization, Trade and Enterprise Development
- iii. The Kenya Revenue Authority

The stakeholders submitted as follows:

3.1 THE NATIONAL TREASURY AND PLANNING

The Chief Administrative Secretary for Planning, Hon. Eric Wafukho appeared before the Committee on Thursday 10th March 2022. He submitted as follows, that:-

29. The TradeNet system has been in operation under KenTrade since 31st October, 2013. During the over eight (8) years, the number of registered system users has grown to over 15,000, as at June 2021.
30. The Committee further heard that over 40 Partner Government Agencies (PGAs) have been enrolled and process their documents in the system. Since inception, the TradeNet system had processed 4,063,131 permits by the end of June 2021.
31. Further, it was noted that the 2018 World Bank Assessment Report highlights the achievements of the NESWS to include among others –
 - i. Improved convenience and substantial cost savings estimated at US Dollars 25.36 million (Kshs. 2.5 billion) per year;
 - ii. Improved connectivity, security, process and procedures where the average number of process steps involved in processing clients applications reduced by almost 50%;
 - iii. Increased level of automation of processes and procedures, from 19% before TradeNet system to over 90% as at June, 2021;
 - iv. Minimized the time required to confirm authenticity of documents and elimination of the need to submit hardcopy permits;
 - v. Alongside other initiatives, clearance time has reduced by 32% and cargo dwell time by 39%; and
 - vi. Improved compliance, revenue collection and traceability in which case the TradeNet system has increased compliance and ensures correct revenue yield.

3.2 MINISTRY OF INDUSTRIALIZATION, TRADE AND ENTERPRISE DEVELOPMENT

In their memorandum Ref: MOITED/SDT/1/95/152 dated 15th March 2022, the Ministry of Industrialization, Trade and Enterprise Development submitted that:-

32. The Bill intends to provide legal framework for strengthening electronic transactions through establishment of the National Electronic Single Window System and the Kenya Trade Network (KenTrade) Agency; the Bill has some areas that are inconsistent with already existing legislations and institutions.
33. The Bill duplicates some roles of the State Department of Trade and Enterprise Development as outlined in the Executive Order No. 1 of 2020. Such duplication would negate the intent of synergy between all stakeholders;
34. The Bill proposes the Agency to undertake functions that are already being handled by other government departments and agencies;
35. The composition of the Agency as proposed provides for an inclusion in the Board of Directors a private sector institution by name that negates flexibility on the part of the appointing authority. The Ministry proposed the following amendments, that:-
36. Clause 24 of the Bill be amended by-
 - (a) deleting the words “*and to facilitate trade*” appearing in paragraph (a);

Committee’s observations

The Committee rejected Clause 24 (a) because;

- i. **The Agency is established to operationalise the National Electronic Single Window System that facilitates trade in Kenya. This does not create duplicity of mandates with the Ministry of industrialization, Trade and enterprise development. KenTrade facilitates trade through the NESWS as an implementer of government policy.**
- ii. **The mandate of the Agency as reflected in this Bill is line with Executive Order No. 6 of 2011, which Order outlines the mandate of the Agency as an implementing Agency for various facets related to the Single Window System for trade facilitation and therefore is a trade facilitator.**
- iii. **All government Agencies involved in the process of clearing cargo at various border point are “*Trade Facilitators*” and this does not in any way water down the role of the State Department of Trade in so far as defining the trade policy is concerned.**

- (b) deleting paragraph “g”;

Committee’s observations

The Committee rejected Clause 24 (g) because;

- i. KenTrade maintains data based on trade information processed through the system hence the law herein provided for the basis of maintaining such data.
- ii. The integration of the Single Window System and other partner Government Agencies requires the system to exchange data. This data is not only used to process current trade transactions but is also used in some cases to process future trade sanctions depending on how businesses have structured their orders.

(c) deleting paragraph "h";

Committee's observation

Clause 24 (h) rejected because;

- i. KenTrade supplements the role of Kenya Bureau of Statistics in collection of data. The Agency collects statistics from the interaction with stakeholders of the Single Window System and the same is shared with various government agencies based on trade transactions processed within the single system.
- ii. This does not in any way with general trade statistics collected by the Ministry or any other agency. KenTrade is a member of the National Committee on Trade and trade facilitation and the Balance of Payments statistics Committee chaired by the Kenya National Bureau of Statistics.
- iii. KenTrade collects enormous amount of data on exports and imports through the Single Window System which data is stored for use by various arms of Government and various regulatory agencies.

(d) inserting the words "*National electronic single window system*" before the word "stakeholders appearing in paragraph (i); and

Committee's observation

Clause 24 (i) accepted by the Committee

Stakeholders can be assumed to be the general public and not users of the National Single Window System.

(e) deleting the words "*trade facilitation*" appearing in paragraph (j) and substituting therefor the words "*the management of the system*"

Committee's observation

Clause 24 (j) rejected by the Committee because;

The mandate of the Agency as reflected in this Bill is in line with Executive Order No. 6 of 2011, which Order outlines the mandate of the Agency as an implementing Agency for various facets related to the Single Window System for trade facilitation and therefore is a trade facilitator.

37. Clause 25 of the Bill be amended by-

- (a) inserting the words “competitively recruited and” immediately after the words “of the agency” appearing in paragraph (b) of subclause (1);
- (b) inserting the words “competitively recruited and” immediately after the words “public officers” appearing in paragraph (g) of subclause (1); and
- (c) inserting the words “of the Board” immediately after the words “members of” appearing in subclause (2);

Committee’s observation

The Committee agreed to the proposed amendment as there is constitutional requirement and the Courts have made constitutional interpretation to that effect. Further, there is also a grammatical omission in the Bill hence the same should be corrected.

3.3 THE KENYA REVENUE AUTHORITY

In their memorandum Ref: KRA/5/1002/5(7042) dated 21st December 2021 Kenya Revenue Authority submitted that the Bill be amended as follows:-

- 38. Insert new Clause 3 on object of the Act as follows; *‘The objectives of this Act is to provide a single platform for facilitation of trade through integration of systems of Government and private entities’*

Committee’s Observation

The Committee agreed to the proposed amendment as there was no clause on the object and purpose of the Act.

- 39. Insert a new clause 4 in the Bill that provides the scope of application of the Bill as follows; *‘The Act shall apply to Government entities, persons importing or exporting goods and to persons involved in domestic trade.’*

Committee’s Observation

The Committee agreed to the proposed amendment as there was no clause in the Bill indicating scope of application of the Act.

- 40. Insert new clause on the guiding principles for users of the system.

The users of the System and the Agency shall be guided by the following principles-

- (a) *simplicity and practicability;*
- (b) *cost effectiveness;*
- (c) *non-discrimination;*
- (d) *constituency and predictability;*
- (e) *modernization and use of new technology;*
- (f) *due process; and cooperation*

Committee's Observation

The Committee agreed to the proposed amendment as the Bill failed to provide for the guiding principles of the Bill.

41. Clause 3 (2)

(a) to be amended to read as follows; *“Lodge documents electronically for processing and approval as provided for under the respective laws implemented by government departments, Ministries and agencies.”*

(b) Deleting paragraph (b)

Committee's Observation

The rejected the proposed amendment as the Single Window system facilitates payment for other partner government agencies.

42. Provide for an exception that specifies the process of lodging and processing of Customs imports and exports documents to provide as follows;

“Despite the provisions of Section 5(3)(a) and (b), the documents for import and export of goods shall be lodged and processed through the Customs System and thereafter dispatched to the System.”

Committee's Observation

The Committee rejected the proposal as documents are lodged in the Single Window System and dispatched to the Partner Government Agencies.

43. Clause 4 of the Bill be amended by—

(a) deleting paragraph (c);

(b) deleting the word “department” appearing in paragraph (e) and substituting therefor the words “Government entity”;

(c) deleting paragraph (f);

Committee's observation

The Committee agreed to the proposed amendment as there is need to facilitate coordination and partnership with the government entity responsible for customs, other relevant government ministries departments or agencies and industry players dealing with trade or trade facilitation.

44. Clause 5 of the Bill be amended by—

(a) renumbering the existing clause as subclause (1);

(b) inserting the following new subclause after the renumbered subclause (1) as follows-
“(2) The Agency commits to maintain the integrity and security of the system.

Committee's Observation

The Committee agreed to the proposed amendment as KenTrade needs to commit to maintain the integrity and security of the system.

45. Clause 7 of the Bill be amended by deleting the words "conform to" appearing immediately after the words "system shall" appearing in subclause 2 and substituting therefore the words "guided by".

Committee's Observation

The Committee agreed to the proposed amendment as there is need for redrafting of the provision to make it clear.

46. Clause 8 of the Bill be amended by deleting paragraph (a) and substituting therefore the following new paragraph (b)-

"(b) Facilitate, through the System, the collection of any other dues as agreed by relevant Government Ministries, departments and agencies as provided for under any written law."

Committee's Observation

The Committee agreed to the proposed amendment as there is need for redrafting of the Clause to make it clear and sound.

47. Clause 13 of the Bill be amended-

- (a) in clause 13 sub-clause (2) by deleting the words "System shall provide a platform" and substituting therefor the words "System shall enable the users of the platform";
(b) the System shall enable the Agency to deregister Users who contravene the laws, regulations or procedures.

Committee's Observation

The Committee agreed to the proposed amendment as there is need for redrafting of the clause to provide for clarity and practicability of the clause.

48. Clause 14 of the Bill be amended-

- (a) in clause sub-clause (1) by deleting the words "if an advanced or" and substituting therefor the word "a";
(b) by deleting subclause (3) and substituting therefor the following new subclause-
(3) Where a person is required or permitted to provide a certified copy of a document and the document exists in paper or other physical form, that requirement shall be deemed to have been fulfilled if an electronic copy of the document is certified to be a true copy of the document and the certification is confirmed by an electronic signature of the person authorized to certify the document which is verified in advance in the System.

Committee's Observation

The Committee agreed to the proposed amendment to provide a legal framework for deregistering users who contravene written laws.

49. Clause 15 of the Bill be amended by deleting sub-clause (3) and substituting therefor the following new sub clause-

“(3) For the purposes of subsection (2), a document sealed if the document includes the electronic signature of the person authorized to seal the document”.

Committee's Observation

The Committee agreed to the proposed amendment as it provides for clarity as the use of the term “advanced electronic signature” is ambiguous.

50. Clause 23 of the Bill Bill be amended by deleting the word ‘taking’ appearing immediately before the words “purchasing or” in paragraph (b) of sub-clause (2).

Committee's Observation

The Committee agreed to the proposed amendment to allow for clarity of the clause as the way the same had been drafted was not clear and made no sense.

51. Clause 25 of the Bill be amended by-

- (d) inserting the words “competitively recruited and” immediately after the words “of the agency” appearing in paragraph (b) of subclause (1);
- (e) inserting the words “competitively recruited and” immediately after the words “public officers” appearing in paragraph (g) of subclause (1); and
- (f) inserting the words “of the Board” immediately after the words “members of” appearing in subclause (2);

Committee's Observation

The Committee agreed to the proposed amendment as this is constitutional requirement and the Courts have made constitutional interpretation to that effect. Further, there is also a grammatical omission in the Bill hence the same should be corrected.

52. **THAT the Bill be amended by inserting the following new clause immediately after clause 25—**

Vacancy of office. of **25A.** A member of the Board shall cease to be a member by the following—

- (a) resignation in writing to the Cabinet Secretary;

- (b) death;
- (c) revocation of appointment by the Cabinet Secretary; and
- (d) dissolution of the agency;

Committee's Observation

The Committee agreed to the proposed amendment as it seeks to provide a legal basis for cessation of office of the Members of the Board that had not been provide for in the Bill.

53. Clause 28 of the Bill be amended by—

- (a) inserting the words, "competitively recruited and" immediately after the word "agency" appearing in subclause (1); and
- (b) deleting the words, "an advanced relevant degree" appearing in paragraph (a) of subclause (2), and substituting therefor the words "relevant postgraduate degree".

Committee's Observation

The Committee agreed to the proposed amendment as the Chief executive Officer should be recruited competitively in line with the provisions of the Constitution. A further amendment on the clause seeks to provide for clarity on the qualifications of the CEO.

PART IV

4 COMMITTEE RECOMMENDATION

54. The Committee having considered the National Electronic Single Window System Bill, 2021 recommends that the House approve the Bill with amendments as proposed in the schedule.

PART V

5 SCHEDULE OF PROPOSED AMENDMENTS

The Committees proposed the following amendments to be considered by the House in the Committee stage:

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 2—

Objectives of the Institute. **2A.** The objectives of the institute shall be to provide a single platform for facilitation of trade through integration of systems of Government and private entities.

Justification:

The Bill as drafted failed to provide for an object and purpose of the Act.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after new clause 2A—

Application of this Act. **2B.** The Act shall apply to Government entities, persons importing or exporting goods and to persons involved in domestic trade.

Justification:

The Bill does not provide for the state on the scope of application of the Act.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after new clause 2B—

Guiding principles. **2C.** The users of the System and the Agency shall be guided by the following principles-

- (g) simplicity and practicability;
- (h) cost effectiveness;
- (i) non-discrimination;
- (j) constituency and predictability;
- (k) modernization and use of new technology;
- (l) due process; and cooperation.

Justification:

The Bill failed to provide for the guiding principles of the Bill.

CLAUSE 4

THAT, Clause 4 of the Bill be amended by—

- (d) deleting paragraph (c);
- (e) deleting the word “department” appearing in paragraph (e) and substituting therefor the words “Government entity”;
- (f) deleting paragraph (f);

Justification:

There is need to facilitate coordination and partnership with the government entity responsible for customs, other relevant government ministries departments or agencies and industry players dealing with trade or trade facilitation.

CLAUSE 5

THAT, Clause 5 of the Bill be amended by—

- (c) renumbering the existing clause as subclause (1);
- (d) inserting the following new subclause after the renumbered subclause (1) as follows-
“(2) The Agency commits to maintain the integrity and security of the system.

Justification:

KenTrade needs to commit to maintain the integrity and security of the system.

CLAUSE 7

THAT, Clause 7 of the Bill be amended by deleting the words “conform to” appearing immediately after the words “system shall” appearing in subclause 2 and substituting therefore the words “guided by”.

Justification:

Redrafting of the provision to make it clear.

CLAUSE 8

THAT, Clause 8 of the Bill be amended by deleting paragraph (a) and substituting therefore the following new paragraph (b)-

“(b) Facilitate, through the System, the collection of any other dues as agreed by relevant Government Ministries, departments and agencies as provided for under any written law.”

Justification:

Redrafting of the clause to make it clear and sound.

CLAUSE 13

THAT, the Bill be amended-

- (c) in clause 13 sub-clause (2) by deleting the words "System shall provide a platform" and substituting therefor the words "System shall enable the users of the platform";
- (d) the System shall enable the Agency to deregister Users who contravene the laws, regulations or procedures.

Justification:

Redrafting of the clause to provide for clarity and practicability of the clause.

CLAUSE 14

THAT, the Bill be amended-

- (c) in clause sub-clause (1) by deleting the words "if an advanced or" and substituting therefor the word "a";
- (d) by deleting subclause (3) and substituting therefor the following new subclause-
(3) Where a person is required or permitted to provide a certified copy of a document and the document exists in paper or other physical form, that requirement shall be deemed to have been fulfilled if an electronic copy of the document is certified to be a true copy of the document and the certification is confirmed by an electronic signature of the person authorized to certify the document which is verified in advance in the System.

Justification:

The proposed amendment provides a legal framework for deregistering users who contravene written laws.

CLAUSE 15

THAT, the Bill be amended by deleting sub-clause (3) and substituting therefor the following new subclause-

"(3) For the purposes of subsection (2), a document sealed if the document includes the electronic signature of the person authorized to seal the document".

Justification:

The amendment is provided to provide for clarity as the use of the term "advanced electronic signature" is ambiguous.

CLAUSE 23

THAT, the Bill be amended by deleting the word ‘taking’ appearing immediately before the words “purchasing or” in paragraph (b) of sub-clause (2).

Justification:

The amendment is proposed to allow for clarity of the clause as the way the same had been drafted was not clear and made no sense.

CLAUSE 25

THAT, Clause 25 of the Bill be amended by-

- (g) inserting the words “competitively recruited and” immediately after the words “of the agency” appearing in paragraph (b) of subclause (1);
- (h) inserting the words “competitively recruited and” immediately after the words “public officers” appearing in paragraph (g) of subclause (1); and
- (i) inserting the words “of the Board” immediately after the words “members of” appearing in subclause (2);

Justification:

This is constitutional requirement and the Courts have made constitutional interpretation to that effect. Further, there is also a grammatical omission in the Bill hence the same should be corrected.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 25—

- Vacancy of office. of **25A.** A member of the Board shall cease to be a member by the following—
- (e) resignation in writing to the Cabinet Secretary;
 - (f) death;
 - (g) revocation of appointment by the Cabinet Secretary; and
 - (h) dissolution of the agency;

Justification;

The amendment seeks to provide a legal basis for cessation if office of the Members of the Board that had not been provide for in the Bill.

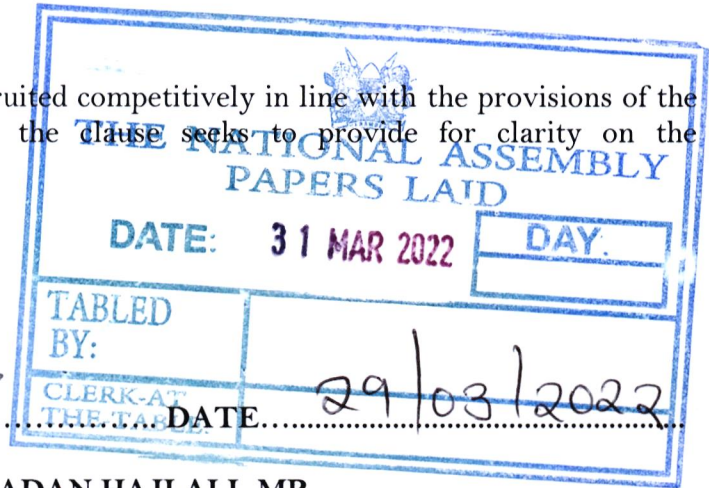
CLAUSE 28

THAT, Clause 28 of the Bill be amended by—

- (c) inserting the words, “competitively recruited and” immediately after the word “agency” appearing in subclause (1); and
- (d) deleting the words, “an advanced relevant degree” appearing in paragraph (a) of subclause (2), and substituting therefor the words “relevant postgraduate degree”.

Justification;

The Chief executive Officer should be recruited competitively in line with the provisions of the Constitution. A further amendment on the clause seeks to provide for clarity on the qualifications of the CEO.



SIGNED.....

**THE HON. ADAN HAJI ALI, MP
CHAIRPERSON,**

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES

ANNEXTURES

1. Adoption Schedule
2. Minutes of the 12th Sitting
3. Minutes of the 9th Sitting
4. Minutes of the 8th Sitting
5. A copy of the advert
6. Submission from stakeholders

2021-09-18

ANNEX I
Adoption List



THE NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES

ADOPTION LIST

Adoption of the report on The National Electronic Single Window System Bill, NA Bill No. 15 of 2021.

NO.	NAME	SIGNATURE
1.	Hon. Adan Haji Ali, MP – Chairperson	
2.	Hon. Wangari Mwaniki, MP – Vice Chairperson	
3.	Hon. William Cheptumo, MP	
4.	Hon. Kareke Mbiuki, CBS, MP	
5.	Hon. Anab Mohamed Gure, MP	ZOOM
6.	Hon. Andrew Mwadime, MP	
7.	Hon. Christopher Doye Nakuleu, MP	
8.	Hon. Daniel Maanzo, EBS, MP	
9.	Hon. Jared Okelo, MP	
10.	Hon. Sharif Athman Ali, MP	ZOOM
11.	Hon. Jones Mlolwa, MP	ZOOM
12.	Hon. Kipruto Moi, MP	
13.	Hon. Khatib Mwashetani, MP	
14.	Hon. Gichimu Robert, MP	ZOOM
15.	Hon. Kimani Patrick Wainaina Jungle, MP	ZOOM
16.	Hon. Fred Ouda, MP	
17.	Hon. Ngugi Joseph Nduati, MP	
18.	Hon. Wachira Rahab Mukami, MP	
19.	Hon. Dr. Wilberforce Oundo, Phd, MP	

FOR: CLERK OF THE NATIONAL ASSEMBLY

ANNEX II

Minutes



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – (SIXTH SESSION)

**MINUTES OF THE 12TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
TRADE, INDUSTRY AND COOPERATIVES HELD ON TUESDAY 29TH MARCH,
2022 IN THE BOARDROOM ON GROUND FLOOR RED CROSS BUILDING,
PARLIAMENT BUILDINGS AT 11.00 A.M.**

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Hon. Adan Hajj Ali, MP | – | Chairperson |
| 2. Hon. Wangari Mwaniki, MP | – | Vice Chairperson |
| 3. Hon. Jones Mlolwa, MP | | |
| 4. Hon. Sharif Athman, MP | | |
| 5. Hon. Jared Okelo, MP | | |
| 6. Hon. Andrew Mwadime, MP | | |
| 7. Hon. Khatib Mwashetani, MP | | |
| 8. Hon. Wachira Rahab Mukami, MP | | |
| 9. Hon. Nduati Joseph Ngugi, MP | | |
| 10. Hon. Gichimu Robert, MP | | |
| 11. Hon. Anab Mohamed Gure, MP | | |
| 12. Hon. Kimani Patrick Wainaina Jungle, MP | | |

APOLOGY

1. Hon. Kareke Mbiuki, CBS, MP
2. Hon. William Cheptumo, MP
3. Hon. Christopher Nakuleu, MP
4. Hon. Daniel Maanzo, EBS, MP
5. Hon. Kipruto Moi, MP
6. Hon. Dr. Wilberforce Oundo, Phd, MP
7. Hon. Fred Ounda, MP

INATTENDANCE

SECRETARIAT

- | | | |
|--------------------------|---|----------------------------|
| 1. Ms. Christine Ndiritu | – | Clerk Assistant II |
| 2. Ms. Nuri Kitel Nataan | – | Clerk Assistant II |
| 3. Ms. Marlene Ayiro | – | Principal Legal Counsel II |
| 4. Ms. Loice Olesia | – | Fiscal Analyst |
| 5. Ms. Rahab Chepkilim | – | Audio Officer |
| 6. Mr. Richard Sang | – | Sgt. At Arms |

MIN.NO.NA/TRADE/2022/045:

**PRELIMINARIES/COMMUNICATION
FROM THE CHAIRPERSON**

The Chairperson called the meeting to order at 11.00 am. A prayer was said. He welcomed the Members present and the meeting deliberated on the day's agenda.

MIN.NO.NA/TRADE/2022/046:

CONFIRMATION OF MINUTES

The Committee confirmed minutes of the previous Sitting as follow:-

1. The Minutes of the 1st Sitting were confirmed having been proposed by Hon. Robert Gichumu, MP and and seconded by Hon. Andrew Mwadime, MP respectively.
2. The Minutes of the 2nd Sitting were confirmed having been proposed by Hon. Jared Okelo, MP and and seconded by Hon. Sharif Athman, MP respectively.
3. The Minutes of the 3rd Sitting were confirmed having been proposed by Hon. Jones Mlolwa, MP and and seconded by Hon. Anab Gure, MP respectively.
4. The Minutes of the 4th Sitting were confirmed having been proposed by Hon. Jared Okelo, MP and and seconded by Hon. Sharif Athman, MP respectively.
5. The Minutes of the 5th Sitting were confirmed having been proposed by Hon. Joseph Ngugi, MP and and seconded by Hon. Jones Mlolwa, MP respectively.
6. The Minutes of the 6th Sitting were confirmed having been proposed by Hon. Khatib Mwashetani, MP and and seconded by Hon. Nduati Ngugi, MP respectively.
7. The Minutes of the 7th Sitting were confirmed having been proposed by Hon. Robert Gichimu, MP and and seconded by Hon. Andrew Mwadime, MP respectively.
8. The Minutes of the 8th Sitting were confirmed having been proposed by Hon. Jungle Wainaina, MP and and seconded by Hon. Sharif Athman, MP respectively.
9. The Minutes of the 9th Sitting were confirmed having been proposed by Hon. Anab Gure, MP and and seconded by Hon. Andrew Mwadime, MP respectively.
10. The Minutes of the 10th Sitting were confirmed having been proposed by Hon. Rahab Mukami, MP and and seconded by Hon. Khatib Mwashetani, MP respectively.
11. The Minutes of the 11th Sitting were confirmed having been proposed by Hon. Andrew Mwadime, MP and and seconded by Hon. Robert Gichimu, MP respectively.

MIN.NO.NA/TRADE/2022/047:

**CONSIDERATION AND ADOPTION OF
THE REPORT ON THE NATIONAL
ELECTRONIC SINGLE WINDOW SYSTEM
BILL, 2021**

The Committee considered the report on the National Electronic Single Window System Bill (National Assembly Bill No. 15 of 2021) with the following amendments

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 2-

Objectives of **2A.** The objectives of the institute shall be to provide a single platform the Institute. for facilitation of trade through integration of systems of Government and private entities.

Justification:

The Bill as drafted failed to provide for an object and purpose of the Act.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after new clause 2A-

Application of **2B.** The Act shall apply to Government entities, persons importing this Act. or exporting goods and to persons involved in domestic trade.

Justification:

The Bill does not provide for the state on the scope of application of the Act.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after new clause 2B-

Guiding principles. **2C.** The users of the System and the Agency shall be guided by the following principles-

- (a) simplicity and practicability;
- (b) cost effectiveness;
- (c) non-discrimination;

- (d) constituency and predictability;
- (e) modernization and use of new technology;
- (f) due process; and cooperation.

Justification:

The Bill failed to provide for the guiding principles of the Bill.

CLAUSE 4

THAT, Clause 4 of the Bill be amended by–

- (a) deleting paragraph (c);
- (b) deleting the word “department” appearing in paragraph (e) and substituting therefor the words “Government entity”;
- (c) deleting paragraph (f);

Justification:

There is need to facilitate coordination and partnership with the government entity responsible for customs, other relevant government ministries departments or agencies and industry players dealing with trade or trade facilitation.

CLAUSE 5

THAT, Clause 5 of the Bill be amended by–

- (a) renumbering the existing clause as subclause (1);
- (b) inserting the following new subclause after the renumbered subclause (1) as follows-
“(2) The Agency commits to maintain the integrity and security of the system.

Justification:

KenTrade needs to commit to maintain the integrity and security of the system.

CLAUSE 7

THAT, Clause 7 of the Bill be amended by deleting the words “conform to” appearing immediately after the words “system shall” appearing in subclause 2 and substituting therefore the words “guided by”.

Justification:

Redrafting of the provision to make it clear.

CLAUSE 8

THAT, Clause 8 of the Bill be amended by deleting paragraph (a) and substituting therefore the following new paragraph (b)-

“(b) Facilitate, through the System, the collection of any other dues as agreed by relevant Government Ministries, departments and agencies as provided for under any written law.”

Justification:

Redrafting of the clause to make it clear and sound.

CLAUSE 13

THAT, the Bill be amended-

- (a) in clause 13 sub-clause (2) by deleting the words “System shall provide a platform” and substituting therefor the words “System shall enable the users of the platform”;
- (b) the System shall enable the Agency to deregister Users who contravene the laws, regulations or procedures.

Justification:

Redrafting of the clause to provide for clarity and practicability of the clause.

CLAUSE 14

THAT, the Bill be amended-

- (a) in clause sub-clause (1) by deleting the words “if an advanced or” and substituting therefor the word “a”;
- (b) by deleting subclause (3) and substituting therefor the following new subclause-
(3) Where a person is required or permitted to provide a certified copy of a document and the document exists in paper or other physical form, that requirement shall be deemed to have been fulfilled if an electronic copy of the document is certified to be a true copy of the document and the certification is confirmed by an electronic signature of the person authorized to certify the document which is verified in advance in the System.

Justification:

The proposed amendment provides a legal framework for deregistering users who contravene written laws.

CLAUSE 15

THAT, the Bill be amended by deleting sub-clause (3) and substituting therefor the following new subclause-

“(3) For the purposes of subsection (2), a document sealed if the document includes the electronic signature of the person authorized to seal the document”.

Justification:

The amendment is provided to provide for clarity as the use of the term “advanced electronic signature” is ambiguous.

CLAUSE 23

THAT, the Bill be amended by deleting the word ‘taking’ appearing immediately before the words “purchasing or” in paragraph (b) of sub-clause (2).

Justification:

The amendment is proposed to allow for clarity of the clause as the way the same had been drafted was not clear and made no sense.

CLAUSE 25

THAT, Clause 25 of the Bill be amended by-

- (a) inserting the words “competitively recruited and” immediately after the words “of the agency” appearing in paragraph (b) of subclause (1);
- (b) inserting the words “competitively recruited and” immediately after the words “public officers” appearing in paragraph (g) of subclause (1); and
- (c) inserting the words “of the Board” immediately after the words “members of” appearing in subclause (2);

Justification:

This is constitutional requirement and the Courts have made constitutional interpretation to that effect. Further, there is also a grammatical omission in the Bill hence the same should be corrected.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 25-

Vacancy of **25A.** A member of the Board shall cease to be a member by the office. following-

- (a) resignation in writing to the Cabinet Secretary;
- (b) death;
- (c) revocation of appointment by the Cabinet Secretary; and

(d) dissolution of the agency;

Justification;

The amendment seeks to provide a legal basis for cessation if office of the Members of the Board that had not been provide for in the Bill.

CLAUSE 28

THAT, Clause 28 of the Bill be amended by-

- (a) inserting the words, "competitively recruited and" immediately after the word "agency" appearing in subclause (1); and
- (b) deleting the words, "an advanced relevant degree" appearing in paragraph (a) of subclause (2), and substituting therefor the words "relevant postgraduate degree".

Justification;

The Chief executive Officer should be recruited competitively in line with the provisions of the Constitution. A further amendment on the clause seeks to provide for clarity on the qualifications of the CEO.

The report was adopted unanimously after having proposed and seconded by Hon. Jared Okelo, MP and Hon. Andrew Mwadime, MP respectively.

MIN.NO.NA/TRADE/2022/048: ADJOURNMENT

The Chairperson adjourned the meeting at 11.30 a.m. The next meeting will be held on notice.

SIGNED.....

 (Chairperson)

DATE.....
 29/03/2022



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – (SIXTH SESSION)

MINUTES OF THE 9TH SITTING OF THE DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES HELD ON THURSDAY 10TH MARCH, 2022 IN MINI CHAMBER COUNTY HALL, PARLIAMENT BUILDINGS AT 12.01 A.M.

PRESENT

- | | | |
|--|---|-------------------------|
| 1. Hon. Adan Hajj Ali, MP | – | Chairperson |
| 2. Hon. Wangari Mwaniki, MP | – | Vice Chairperson |
| 3. Hon. Andrew Mwadime, MP | | |
| 4. Hon. Khatib Mwashetani, MP | | |
| 5. Hon. Anab Mohamed Gure, MP | | |
| 6. Hon. Jones Mlolwa, MP | | |
| 7. Hon. Nduati Joseph Ngugi, MP | | |
| 8. Hon. Gichimu Robert, MP | | |
| 9. Hon. Kimani Patrick Wainaina Jungle, MP | | |

APOLOGY

1. Hon. William Cheptumo, MP
2. Hon. Kareke Mbiuki, CBS, MP
3. Hon. Daniel Maanzo, EBS, MP
4. Hon. Kipruto Moi, MP
5. Hon. Christopher Nakuleu, MP
6. Hon. Sharif Athman, MP
7. Hon. Jared Okelo, MP
8. Hon. Dr. Wilberforce Oundo, Phd, MP
9. Hon. Fred Ounda, MP
10. Hon. Wachira Rahab Mukami, MP

INATTENDANCE

SECRETARIAT

- | | | |
|--------------------------|---|--------------------|
| 1. Ms. Christine Ndiritu | – | Clerk Assistant II |
| 2. Ms. Nuri Kitel Nataan | – | Clerk Assistant II |
| 3. Mr. Joseph Ndirangu | – | Fiscal Analyst |
| 4. Ms. Loice Olesia | – | Fiscal Analyst |
| 5. Ms. Rahab Chepkilim | – | Audio Officer |
| 6. Mr. Richard Sang | – | Sgt. At Arms |

MINISTRY OF NATIONAL TREASURY AND PLANNING

1. Hon. Eric Simiyu Wafukho - CAS, Planning
2. Mr. Amos Wangora - CEO, KenTrade

MINISTRY OF INDUSTRIALIZATION, TRADE AND ENTERPRISE DEVELOPMENT

1. Ms. Betty Maina - Cabinet Secretary
2. Amb. Kirimi Kaberia - Principal Secretary-SDI
3. Amb. Johnson Weru - Principal Secretary-SDT
4. Mr. Nicholas Kamau - SCFO-SDI
5. Dr. Paul Ole Narikae - MD, KIE

MIN.NO.NA/TRADE/2022/032: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON

The Chairperson called the meeting to order at 12.10 am. A prayer was said. He welcomed those present and introductions were made and the meeting deliberated on the day's agenda.

MIN.NO.NA/TRADE/2022/033: MEETING WITH TREASURY AND KENTRADE ON THE NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM BILL, 2021

The Chief Administrative Secretary, Hon. Eric Simiyu Wafukho submitted that the National Treasury was in support the Bill in its entirety.

MIN.NO.NA/TRADE/2022/034: MEETING WITH MINISTRY OF INDUSTRIALIZATION, TRADE AND ENTERPRISE DEVELOPMENT ON THE NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM BILL, 2021

The Cabinet Secretary Ministry of Industrialization, Trade and Enterprise Development submitted that the Ministry had reviewed the Bill and was in support and further submitted amendments to improve the Bill.

(Details of the specific amendments to the Bill proposed by the above stakeholders are contained in Part III of the Report on the Consideration of the National Electronic Single Window System Bill, NA Bill No. 15 of 2021)

MIN.NO.NA/TRADE/2022/035: MEETING WITH MINISTRY OF INDUSTRIALIZATION, TRADE AND ENTERPRISE DEVELOPMENT ON STATEMENT ON THE GOVERNMENT MORATORIUM RELATED TO THE BAN ON SCRAP METAL TRADE.

The Cabinet Secretary Ministry of Industrialization, Trade and Enterprise Development responded to the Statement and further submitted that:-

1. The Ministry has developed standard guidelines for the purpose of conducting scrap metal business in the country and it was presented before the multi-agency meeting on 9th February 2022 for discussion and deliberations.
2. The draft guidelines has been presented to representative of all stakeholders involved in the Scrap Metal trade namely: Kenya Iron and Scrap Metal Association, Millers, Scrap Metal Recyclers among others on 15th February 2022, with a view of streamlining their operations and issuance of new licences for the sector players who are not licensed.
3. Subsequently, the Guidance was shared with the Minister Interior and Coordination of the National Government, Head of Public Service and the Attorney General for concurrence on 17th February 2022 thus this presents an opportunity for it to be discussed in the Cabinet.
4. The Cabinet Secretary, Industrialization, Trade and Enterprise Development met with Cabinet Secretary Ministry of Interior and Coordination of the National Government on 28th February 2022 and an agreement was undertaken to convene a meeting of all the relevant Stakeholders from public and private sectors in order to review the draft guidelines and chart the way forward on the matter in preparation of lifting of the moratorium.
5. It is to the interest for all stakeholders that all persons/businesses handling scrap metal should be licensed and to use Business Membership Organizations to undertake the initial vetting of the members. As you may recall proper guidelines was a pre-condition for lifting of the moratorium.
6. On 16th March 2022 a meeting was held by all stakeholders and Chaired by the Cabinet Secretary, Ministry of Interior and Coordination of National Government with attendance of myself, the Attorney General, the Principal Secretary Ministry of Energy and Industrialization and the Inspector General of National Police Service among other players from Government Agencies and private sector.
7. It was agreed during the meeting that the scrap metal dealers should register through the scrap metal council website given that it was noted that only ninety one (91) out of the mapped seven hundred and twenty one (721) and also that the drafted guidelines be drafted into rules. The Attorney General then drafted the Scrap Metal Rules, 2022 for purpose of public participation on 18th March 2022. So far, one hundred and seventy five (175) businesses have registered and are continuing to do so by 22nd March 2022.
8. The applicable guidelines were to be the pre-requisite of lifting the moratorium announced by His Excellency. The draft Scrap Metal Rules, 2022 will assist in the implementation of the Scrap Metal Act No.1 of 2015.
9. In terms of estimations the Moratorium has ensured that approximately Kshs 3 billion has not been lost by the vandalism of Critical Infrastructure otherwise by looking for the past few years this amount would have been lost if the Scrap metal business were operational. By the time the moratorium was announced only about 20 firms had registered and many

businesses in the sector were not captured by Government Agencies therefore the operations of the businesses cannot be estimated. Due to gaps in the data available the Ministry will liaise with relevant Government Agencies in order to provide a more accurate data.

MIN.NO.NA/TRADE/2022/036: ADJOURNMENT

The Chairperson adjourned the meeting at 2.30 p.m. The next meeting will be held on notice.

SIGNED.....

(Chairperson)

DATE..... 29/03/2022



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – (SIXTH SESSION)

**MINUTES OF THE 8TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
TRADE, INDUSTRY AND COOPERATIVES HELD ON TUESDAY 8TH MARCH, 2022
IN MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS AT 11.00 A.M.**

PRESENT

- | | | |
|--|---|-------------------------|
| 1. Hon. Adan Hajj Ali, MP | – | Chairperson |
| 2. Hon. Wangari Mwaniki, MP | – | Vice Chairperson |
| 3. Hon. Andrew Mwadime, MP | | |
| 4. Hon. Khatib Mwashetani, MP | | |
| 5. Hon. Jared Okelo, MP | | |
| 6. Hon. Jones Mlolwa, MP | | |
| 7. Hon. Sharif Athman, MP | | |
| 8. Hon. Gichimu Robert, MP | | |
| 9. Hon. Kimani Patrick Wainaina Jungle, MP | | |

APOLOGY

1. Hon. William Cheptumo, MP
2. Hon. Kareke Mbiuki, CBS, MP
3. Hon. Daniel Maanzo, EBS, MP
4. Hon. Kipruto Moi, MP
5. Hon. Christopher Nakuleu, MP
6. Hon. Dr. Wilberforce Oundo, Phd, MP
7. Hon. Fred Ounda, MP
8. Hon. Anab Mohamed Gure, MP
9. Hon. Nduati Joseph Ngugi, MP
10. Hon. Wachira Rahab Mukami, MP

INATTENDANCE

SECRETARIAT

- | | | |
|--------------------------|---|----------------------------|
| 1. Ms. Christine Ndiritu | – | Clerk Assistant II |
| 2. Ms. Nuri Kitel Nataan | – | Clerk Assistant II |
| 3. Ms. Marlene Ayiro | – | Principal Legal Counsel II |
| 4. Ms. Loice Olesia | – | Fiscal Analyst |
| 5. Ms. Rahab Chepkilim | – | Audio Officer |
| 6. Mr. Richard Sang | – | Sgt. At Arms |

**MIN.NO.NA/TRADE/2022/029: PRELIMINARIES/COMMUNICATION
FROM THE CHAIRPERSON**

The Chairperson called the meeting to order at 11.00 am. A prayer was said. He welcomed those present and the meeting deliberated on the day's agenda.

MIN.NO.NA/TRADE/2022/030: BRIEF BY THE LEGAL COUNSEL

The Legal Counsel briefed the Committee on the following Bills, that:-

a. The Co-operative Societies (Amendment) Bill (Senate Bill No. 11 of 2020) sponsored by Sen. Dr. Agnes Zani, MP.

1. Kenya Co-operative Societies Act No 12 of 1997 is an Act of Parliament relating to the constitution, registration and regulation of co-operative societies and purposes incidental thereto.
2. The Co-operative Societies (**Amendment**) **Bill 2020** was passed by the Senate with amendments on 2nd December 2021.
3. The object of the amendment Bill is to amend the Co-operative Societies Act, No 12 of 1997 so as to align it to the Constitution of Kenya 2010, by setting out the functions of the National Government and County government in relation to governance of co-operative Societies.
4. Whereas under paragraph 7(e) of the **Fourth** schedule to the Constitution co-operative societies fall under county governments, the organization and role of co-operative societies in the economy of the country necessitates that the National Government play a role in the governance of cooperative societies.
5. The Bill seeks to provide that governance of primary co-operative societies be overseen by the county governments while the National government shall be responsible for national policy and be responsible for the apex society and co-operative unions.
6. The Amendment Bill contains 51 clauses.

b. The National Electronic Single Window System Bill, 2021.

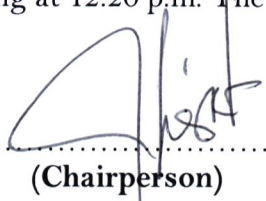
The National Electronic Single Window System Bill, 2021 seeks to provide a framework to facilitate trade and commerce using the National Electronic Single Window System. This is done through the establishment of the National Electronic Single Window System and prescribing a framework for its operations.

MIN.NO.NA/TRADE/2022/031:

ADJOURNMENT

The Chairperson adjourned the meeting at 12.20 p.m. The next meeting will be held on notice.

SIGNED.....



(Chairperson)

DATE.....

29 | 03 | 2022

ANNEX III

Advert

ANNEX IV

Submissions from Stakeholders



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
FINANCE - NAIROBI
Fax No. 315779
Telephone: 2252299

THE NATIONAL TREASURY
P.O. Box 30007 - 00100
NAIROBI
KENYA

*NRI kitel
pls facilitate
up ✓
14/3/22*

When replying please quote

Ref: TNT/CONF 268/014 'H' (77)

Date: 9th March, 2022

Michael Sialai, CBS
Clerk of the National Assembly
Parliament of Kenya,
Nairobi.

*D/DC
Please deal
[Signature]*

Dear *Sialai*

RE: APPOINTMENT OF REPRESENTATION TO THE MEETING WITH
THE DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY &
COOPERATIVES ON NATIONAL ELECTRONIC SINGLE WINDOW
SYSTEM NBILL, 2021 (NATIONAL ASSEMBLY BILL NO. 15)

We refer to your letter No. NA/DDC/TRADE/2022/008 dated 2nd march, 2022 on the above subject. The Cabinet Secretary, National Treasury & Planning has been invited by the Departmental Committee on Trade, Industry & Cooperatives to deliberate on the above subject matter on Thursday, 10th March, 2022 in Committee Room on 5th floor, Continental House, Parliament Buildings at 10.00 a.m.

The Cabinet Secretary is currently attending to other official duties and therefore, not in a position to attend the said meeting. The purpose of this letter is to seek your indulgence to request the committee to allow the Cabinet Secretary be represented by the **Chief, Administrative Secretary, Hon. Nelson R. Gaichuhie** in the meeting.

Yours *Sincerely*
[Signature]

RECEIVED
14 MAR 2022
DIRECTOR
Directorate of Departmental Committees

HON. (AMB.) UKUR YATANI, EGH
CABINET SECRETARY/NATIONAL TREASURY & PLANNING

Copy: The Chairperson,

Departmental Committee on Trade, Industry & Cooperatives

National Assembly

Parliament Buildings

Chief Administrative Secretary,

National Treasury



**THE CABINET SECRETARY'S TALKING NOTES TO THE
NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON
TRADE, INDUSTRY & COOPERATIVES:**

THE NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM BILL, 2021

I. INTRODUCTION

- 1.0 The National Electronic Single Window System (Also known as the TradeNet System) is an electronic system that allows parties involved in trade and transport to lodge standardized information and documents with a single-entry point to fulfill all import and export related regulatory requirements.
- 2.0 It provides efficiency in trade transactions by providing a central platform where traders can get services and clearances/permits from all government agencies involved in international trade by making applications through one single system. It also ensures standardization of trade documentation and processes and faster processing of trade documentation.
- 3.0 To implement the system, Kenya Trade Network Agency (KenTrade) was established under the The National Treasury and Planning through Legal Notice No. 6 of 2011 to carry out the following functions:
 - 3.1 Implement, in consultation with the Minister, policies relating to the National Electronic Single Window System;

- 3.2 Integrate electronic systems of public and private entities involved in receipting; processing and approving documents relating to international trade transactions;
- 3.3 Develop, manage and promote interchange of electronic data for facilitation of trade;
- 3.4 Undertake and coordinate research and surveys in electronic commerce aimed at simplifying and harmonizing trade documentation;
- 3.5 Maintain an electronic database of all imported and exported goods and services and the levies; fees; duties and taxes charged on imported or exported goods and services;
- 3.6 Collect trade statistics
- 3.7 Plan, develop, monitor and evaluate training programmes for all stakeholders to ensure conformity with international best practices; and
- 3.8 Perform such other functions related to trade facilitation and other such duties as the Minister may, from time to time, assign to the Agency.

II. OBJECTIVES OF THE SYSTEM

- 4.0 As a single-entry point for trade applications, the Kenya National Electronic Single Window system is aimed at:
 - 4.1 Improving service delivery to customers by reducing cargo clearance times.
 - 4.2 Facilitating electronic interaction of all stakeholders in facilitating import and export business.
 - 4.3 Reducing paper transactions by adopting electronic processing of Customs and related documents.

- 4.4 Adopting a modern and open transaction processing system that is capable of interfacing with other internal and external systems.

III. OPERATIONS AND ACHIEVEMENTS

5.0 The TradeNet system has been in operation under KenTrade since October 31, 2013 (over 8 years).

5.1 **Users:** In this period, the number of registered system users have grown to over 15,000 as at June, 2021.

5.2 **Partner Government Agencies:** Over 40 Partner Government Agencies (PGAs) have been enrolled and process their documents in the system.

5.3 **Permits:** Since inception, the TradeNet system had processed a total of 4,063,131 permits by the end of June 2021.

5.4 The 2018 World Bank Assessment Report highlighted the benefits/achievements of the National Electronic Single Window System to include:

- a) Improved convenience and substantial cost savings estimated at **US\$25.36 million (KShs.2.5 billion)** per year.
- b) Improved connectivity, security, process and procedures where the average number of process steps involved in processing clients applications reduced by almost **50%**.
- c) Increased level of automation of processes and procedures, from **19%** before TradeNet system **to over 90%** as at June 2021.
- d) Removal of potential to falsify documents. Minimized time required to confirm authenticity of documents and elimination of the need to submit hardcopy permits.
- e) With other initiatives, clearance time has reduced by 32% and cargo dwell time by 39%.

- f) Improved compliance, revenue collection and traceability in which case the TradeNet system has increased compliance and ensures correct revenue yield.
- g) Over US\$22.19 million collected through the system per year with majority of Government Agencies recording double digit growth in revenue year on year.
- h) Improved governance, accountability and transparency through elimination of human interaction between officers in various Government agencies and the private sector.
- i) Paperless (electronic) application by traders 24/7 basis.

IV. THE KNESWS BILL, 2021

- 6.0 The National Electronic Single Window System Bill, 2021 is a Bill for an Act of Parliament to provide for the establishment and operationalization of the National Electronic Single Window System in order to facilitate trade; the establishment of the Kenya Trade Network Agency; to provide for electronic transactions and connected purposes.
- 7.0 The Bill seeks to give legal effect to the operations of the National Electronic Single Window System by strengthening the mandate of the Kenya Trade Network Agency.
- 8.0 One of the key challenges faced by the Agency in fulfilling its mandate of managing and implementing the national electronic single window system has been the lack of a strong legal framework backed by legislation establishing it and setting out its mandate and powers.
- 9.0 The Bill therefore seeks to address this challenge as well as fulfil the following objectives:
 - 9.1 Providing an appropriate legal framework for the recognition of electronic certificates/permits issued through the System.
 - 9.2 Increasing the level of coordination and partnerships amongst agencies dealing with trade facilitation through the system in order to increase Kenya's competitiveness in international trade.

- 9.3 Improving certainty with regards to electronic transactions in trade and reduce legal barriers to electronic transactions.
- 9.4 Standardization of documents and single decision making for customs release.
- 9.5 Facilitating the Single-entry point of submission and receipt of documents or any other information required for trade facilitation.
- 9.6 Facilitating trade related payment of fees.
- 9.7 Enabling synchronized processing of data or information.
- 9.8 Provide a legal framework that will strengthen electronic transactions.
- 9.9 Amend various Statutes to recognize or formalize the issuance of electronic certificates and permits that are currently issued by various Agencies through the National Electronic Single Window System.

V. PUBLIC PARTICIPATION REQUIREMENT

- 10.0 The Bill has undergone extensive public participation through engagement with various stakeholders in various forums including:
 - a) Public sensitizations on the draft Bill
 - b) Regional Public forums in Nairobi, Mombasa, and Kisumu
 - c) Notice in the National Daily Newspapers
 - d) Publication on the Agency's Website for public access
 - e) Request for written and oral comments from the public via official email address.
- 11.0 The Public participation forums yielded positive feedback from the public.

VI. SUMMARY OF THE BILL

- 12.0 **PART I** - Provides for the preliminary provisions, the short title and interpretation of terms used.
- 13.0 **PART II** - Provides for establishment and administration of the System. It provides for cooperation of Government Agencies using the National Electronic Single Window

System to facilitate trade, technical aspects of the system to safeguard against abuse of the system, registration of users of the system and regional cooperation in trade facilitation through use of the system. The Bill further repeals Legal Notice No. 6 of 2011 upon establishment of the Kenya Trade Network Agency under the Bill.

14.0 **PART III** – Provides for the certainty in relation to electronic information and electronic transactions in the System. The aim is to strengthen the legal effect of documents that are transacted through the National Electronic Single Window System.

15.0 **PART IV** - Provides for the establishment of the Kenya Trade Network Agency. It outlines the functions and powers of the Agency, establishment of the Board, its composition and functions, qualification and disqualification for appointment and their remuneration.

This part also provides for the additional functions and powers of the Board including the power to establish Committees and the conduct of meetings. It further provides for appointment of the Chief Executive Officer and the Board Secretary, their qualifications, roles and responsibilities.

16.0 **PART V** - Provides for the funding of the Agency, budgeting, accounting and auditing of the Agency. These range from financial arrangements, preparation of annual reports, and management of information and records by the Board and investments of funds with the direction of the Cabinet Secretary.

17.0 **PART VI** - Provides for the security of the system, limitation of liability to protect the Agency against liabilities and to provide for sanctions against parties who abuse the system.

This part further provides for a number of general provisions, regulations and subsequent consequential amendments. Repeal of Legal Notice No. 6 of 2011 is further provided for so as to enable the Agency operate under an Act of Parliament.

18.0 **THE SCHEDULE TO THE BILL** – provides for consequential amendments to various laws to provide for collaboration among various public entities in sharing information and performing processes using the National Electronic Single Window System.

I urge members of the National Assembly to pass this Bill into law to enable the country to continue benefiting from the successes of the National Electronic Single Window System and to ensure increased efficiency in trade transactions.

I thank you All.



HON. (AMB.) UKUR YATANI, EGH
CABINET SECRETARY/ NATIONAL TREASURY & PLANNING

Explanatory note for the National Electronic Single Window System Bill, 2021



REPUBLIC OF KENYA

THE NATIONAL TREASURY & PLANNING

Explanatory notes on:

The National Electronic Single Window System Bill, 2021

March 2022

<i>Provision of the Bill</i>	<i>Explanatory Note</i>	
PART II- ESTABLISHMENT AND ADMINISTRATION OF THE NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM		
1. Section 3 of the Bill provides for the establishment of the National Electronic Single Window System —	The Bill Establishes the National Electronic Single Window System under legislation and provides that the System shall serve as a single entry point for parties involved in trade and transport.	
(1) There is established a system to be known as the National Electronic Single Window System.		
(2) The System shall serve as a single entry point and platform for any person involved in trade and transport to—		The Bill provides for establishment of a platform to facilitate the electronic payment for fees and levies, due to the Government, on goods imported or exported.
(a) lodge documents electronically including import or export documents for processing and approval; and		
(b) facilitate the electronic payment for fees and levies, due to the Government, on goods imported or exported for transactions submitted through the System.		
(3) Despite subsection (2), the System may be used by a person involved in domestic trade transactions.		The Bill further provides for the right of use to be granted to individuals carrying out domestic trade within the country under Sect 3 (3).
2. Section 4 -The main objectives of the System shall be—	The Bill sets out the objectives of the System mainly being to ease and facilitate trade and to enhance electronic transactions in trade and reduce legal and operational barriers to electronic transactions.	
(a) to facilitate the single-entry point submission and receipt of documents or any other information required for trade facilitation;		
(b) to enable the synchronized processing of data or information;		
(c) to enable the standardization of documents and single decision-making for customs release and clearance;		The Bill further seeks to standardize documents for customs release and clearance to be lodged to the system
(d) to facilitate electronic transactions in trade and reduce legal and operational barriers to electronic transactions;		

Explanatory note for the National Electronic Single Window System Bill, 2021

<i>Provision of the Bill</i>	<i>Explanatory Note</i>
(e) to facilitate co-ordination and partnership among the department responsible for customs, other relevant Government ministries, departments or agencies and industry players dealing with trade or trade facilitation; and	The Bill Strengthens the capacity of the Agency to enter into partnerships with MDAs dealing with trade.
(f) to facilitate trade-related payments of fees and levies.	
3. Section 5- The System shall be administered by the Agency.	The Bill mandates Kenya Trade Network Agency established under Section 23 to administer the System. The Agency is currently established under Legal Notice No. 6 of 2011.
4. Section 6-Government entities shall co-operate with the Agency in—	<p>The Bill gives legal effect and provides clarity in terms of coordination between Ministries, Departments & Agency's and industry players with the Agency. This is to ensure harmonization of information between different key players in the trade industry.</p> <p>The Bill further provides for mechanisms to ensure that the Agencies dealing with the System maintain the integrity and security of the system</p>
(a) making and conducting service level agreements;	
(b) digitizing and aligning of internal operations;	
(c) registration for use of the System;	
(d) payment of fees and levies approved by the Cabinet Secretary;	
(e) the maintenance of integrity of the System;	
(f) the maintenance of the security of the System	
(g) discovery of evidence for court proceedings which relate to the System;	
(h) generation of data for official use by the Agency;	
(i) respect for intellectual property rights of others in the use of the System; and	
(j) any other area that may be necessary for the attainment of the objectives of the Act.	

Explanatory note for the National Electronic Single Window System Bill, 2021

<i>Provision of the Bill</i>	<i>Explanatory Note</i>
<p>5. Section 7-(1) The Agency shall adopt relevant internationally accepted standards, procedures, documents, technical details and formalities for the effective implementation of the System.</p>	<p>The Bill seeks to codify and give effect to International standards and best practices related to trade. This is in line with Article 2 (5) & (6) of The 2010 Constitution.</p>
	<p>The Bill also sets out relevant principles to be adhered to in implementation of the system. These principles reflect Articles 10 (2 c) -National principles, Article 31- Right to Privacy and Article 35 – Access to information. The bill is also in conformity with the Data Protection Act no. 24 of 2019.</p>
<p>(2) The processes and technical aspects of the System shall conform to the following principles—</p>	
<p>(a) transparency in relation to procedures being undertaken through the System;</p>	
<p>(b) security of trade data;</p>	
<p>(c) simplicity and accessibility;</p>	
<p>(d) confidentiality and privacy;</p>	
<p>(e) reliability and consistency;</p>	
<p>(f) scalability and interoperability; and</p>	
<p>(g) efficiency</p>	
<p>6. Section 8- The Agency may—</p>	<p>The Bill mandates the Agency subject to the approval of the Cabinet Secretary to charge nominal fees for its services and to facilitate collection of any other fees payable to other government ministries, departments or agencies.</p>
<p>(a) subject to the approval by the Cabinet Secretary, levy nominal fees for its services as may be specified through a notice; and</p>	<p>The provisions cater for sustainability of the Agency.</p>
<p>(b) facilitate, through the System, the collection of any other dues provided for under any written law by relevant Government ministries, departments or agencies.</p>	
<p>7. Section 9- (1) A person who is required to use the System shall apply to the Agency to be registered as a user of the System.</p>	<p>The Bill outlines the procedure to be followed by individuals who wish to use the system. The procedure entails lodging an application with the Agency in a</p>
<p>(2) An application under subsection (1) shall be in the prescribed form.</p>	

Explanatory note for the National Electronic Single Window System Bill, 2021

<i>Provision of the Bill</i>	<i>Explanatory Note</i>
(3) The Agency shall—	prescribed form, the application is reviewed by the Agency and finally the agency may register or decline registration. The Agency will also have the power to deregister a user based on the guidelines in the Bill.
(a) issue a notification of registration to a registered user of the System; and	
(b) keep and maintain an electronic register of the registered users.	
(4) The Agency may—	
(a) reject an application under this section where a person fails to meet the conditions specified in the Regulations or any other law;	The Bill has provided for the ability of the Agency to undertake due diligence and protect the system against abuse or use by unauthorized parties.
(b) deregister a person registered under this section where the person—	
(i) contravenes the conditions specified in the Regulations made under this Act or any other law;	
(ii) has been convicted of an offence under this Act or any other relevant law relating to improper access to or interference with the System.	
8. Section 10- The Agency shall, for the purposes of establishing a regional or international electronic single window system—	The Bill mandates the Agency to be the National lead agency in respect to regional and international trade and to collaborate with other such agencies in the establishment of a Regional Single Window .
(a) be the national lead agency; and	
(b) collaborate with regional, international institutions or agencies.	

PART III—IMPROVING CERTAINTY IN RELATION TO ELECTRONIC INFORMATION AND ELECTRONIC COMMUNICATION IN THE SYSTEM	
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Explanatory note for the National Electronic Single Window System Bill, 2021

<p>9. Section 11(1) the Provisions of Part VI(A) of the Kenya Information and Communications Act, 1998, or any other law relating to the electronic transactions and cyber security shall apply to the System.</p>	<p>This Bill proposes to align itself with application of all provisions under part VI(A) of the Kenya Information and Communications Act, 1998 in all electronic transactions to be carried out by the Agency in the system and the Computer Misuse and Cyber Security Act</p>
<p>(2) The Agency shall, in relation to electronic transactions conducted under the System, have and exercise the powers to—</p> <p>(a) facilitate electronic transactions by use of reliable electronic records; and</p> <p>(b) promote public confidence in the integrity and reliability of electronic records in the system.</p>	<p>The Bill provides for reliability in use of the Single Window System</p>
<p>10. Section 12 Information submitted, communicated or referred to in an electronic form in the System by the user, shall have the same legal effect as if it was submitted in a physical form.</p>	<p>The Bill provides for legal effect of information in an electronic form as being the same as if the same information was submitted physically.</p> <p>The provision of Section 106B of the Evidence Act, Cap 80 would apply.</p>
<p>11. Section 13(1) A legal requirement under any law that requires information or document to be in writing shall be deemed to have been met if the information or document in the System is—</p> <p>(a) produced, recorded, retained or presented in the form of a data message; and</p>	<p>The Bill provides for Electronic submission of documents and access to information. The Provisions of Access to information Act shall apply.</p>

Explanatory note for the National Electronic Single Window System Bill, 2021

<p>(b) readily accessible in a manner which is usable for subsequent reference.</p> <p>(2) The Agency may provide information in the System for use by an authorised person.</p> <p>(3) The System shall provide a platform for—</p> <ul style="list-style-type: none"> (a) making a request for registration or deregistration; (b) making an application; (c) giving, sending or serving a notification; (d) making, varying or cancelling a transaction; (e) deregistration of users; and (f) any other matter that is relevant to the objects of the Act. 	
<p>(4) Despite any other provision in this Act, a legal prescription relating to the form or layout of, or the materials to be used for writing, information, or any similar requirement in the System, may not be complied during the generation of information from the System.</p>	
<p>12. Section 14 (1) A signature, a statement or a document that requires to be notarised, acknowledged, verified or made under oath shall be fulfilled in the System if an advanced or secure electronic signature of a person authorised by law to sign or notarise the document is attached, incorporated or is logically associated with the electronic record.</p> <p>(2) Where a person is required or permitted to provide a certified copy of a document which is in electronic form in the System, the requirement shall be deemed to have been fulfilled if that person provides a printout that has been certified to be a true copy of the document.</p>	<p>This Section seeks to explain notarisation of a document.</p> <p>Electronic signature means data in electronic form affixed to or logically associated with other electronic data which may be used to identify the signatory</p>

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<p>(3) Where a person is required or permitted to provide a certified copy of a document and the document exists in paper or other physical form, that requirement shall be deemed to have been fulfilled if an electronic copy of the document is certified to be a true copy of the document and the certification is confirmed with an advanced electronic signature in the System.</p>	
<p>13. Section 15(1) A requirement that multiple copies of a document in the System are to be submitted to a person simultaneously shall be deemed to have been fulfilled by submitting a single data message which is capable of being reproduced by the person to whom the data message is submitted.</p> <p>(2) Where a document in the System is required to be sealed and the law does not prescribe the method or form by which it shall be sealed, that document may be sealed by electronic means.</p> <p>(3) For purposes of subsection (2), a document is sealed by electronic means if the document includes the advanced electronic signature of the person authorised to seal the document.</p>	<p>This section provides for the fulfillment of a requirement for submission of multiple copies through a single data message.</p> <p>It also allows for use of an electronic signature to fulfil a requirement for a sealed document.</p>
<p>14. Section 16 An electronic communication in the System shall be deemed to have been dispatched at the time the electronic communication first enters an information system outside the control of the originator.</p>	<p>This proposed section seeks to provide an explanation on the time of dispatch of communication in the system</p>
<p>15. Section 17 An electronic communication in the System shall be deemed to have been received—</p> <p>(a) in the case of an addressee who has designated an information system for the purpose of receiving electronic communications, at the time the electronic communication enters that information system; or</p> <p>(b) in any other case, at the time the electronic communication comes to the attention of the addressee.</p>	<p>This proposed section seeks to provide an explanation on the time of receipt of communication in the system</p>

Explanatory note for the National Electronic Single Window System Bill, 2021

<p>16. Section 18(1) For the purposes of this Part, the integrity of information shall be deemed to have been maintained in the System if the information has remained complete and unaltered.</p> <p>(2) Despite subsection (1), the integrity of the information shall not be deemed to have been altered merely because of the addition of any endorsement, or any material change that may have arisen in the normal course of communication, storage or display.</p>	<p>This proposed section provides for integrity of information to be maintained in the system.</p>
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<p>17. Section 19(1) Where the originator of a data message in the System specifies that the receipt of the message is conditional on acknowledgment, the data message shall be deemed as having not been sent until such acknowledgement is received by the originator.</p> <p>(2) Where the originator of a data message in the System specifies that the message is conditional on receipt of an acknowledgment within a specified or agreed period and the acknowledgment is not received by the originator within the period specified or agreed or, if no time has been specified or agreed upon, within a reasonable time, the originator may—</p> <ul style="list-style-type: none">(a) give notice to the addressee stating that an acknowledgment has not been received and specify a reasonable time within which the acknowledgment should be received; and(b) upon notice to the addressee—<ul style="list-style-type: none">(i) treat the data message as though it has never been sent; or(ii) exercise any other rights that the addressee may have in respect of the data message. <p>(3) Where the originator of the System does not specify that the acknowledgment is to be given in a particular form or by a particular method, the acknowledgment may be given by—</p> <ul style="list-style-type: none">(a) any communication from the addressee, whether automated or otherwise; or(b) any conduct of the addressee which is sufficient to indicate to the originator that the addressee has received the data message.	<p>This proposed section seeks to explain the delivery of data messages and the acknowledgement for receipt by the recipient.</p>
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Explanatory note for the National Electronic Single Window System Bill, 2021

(4) Where the originator of a data message in the System receives an acknowledgment from the addressee, and unless there is evidence to the contrary, it shall be presumed that the addressee received the data message.

(5) The presumption contemplated under subsection (4) shall not imply that the content of the electronic record correspond to the content of the record that has been received.

(6) Where the acknowledgment of a data message states that the related data message fulfilled the technical requirements, either agreed upon or prescribed in applicable standards, it shall be presumed that those requirements have been made.

(7) Except in so far as it relates to sending or receiving of a data message, this section shall not apply to the legal consequences that arise from the data message or from the acknowledgment of its receipt.

Explanatory note for the National Electronic Single Window System Bill, 2021

<p>18. Section 20. In addition to the requirements prescribed under section 83I of the Kenya Information and Communication Act, where a person is required to retain information that is contained in the System, that person shall—</p> <p>(a) also retain such information he or she has obtained that may enable the identification of—</p> <p>(i) the origin of the electronic communication;</p> <p>(ii) the destination of the electronic communication; and</p> <p>(iii) ensure that the information referred to in paragraph (a), is readily accessible for subsequent reference.</p>	<p>The proposed section seeks to provide an explanation of retaining information contained in the system as per the provisions of this Bill.</p>
<p>19. Section 21. The Agency shall provide or produce information that is in paper or other non-electronic form by providing or producing the information in electronic form, whether by means of an electronic communication or otherwise, if—</p> <p>(a) the form and means of the provision or production of the information ensures the maintenance of the integrity of the information, and the information is readily accessible for subsequent reference; and</p> <p>(b) the person to whom the information is required to be provided or produced consents to the information being provided or produced in an electronic form and, where applicable, by means of an electronic communication.</p>	<p>The proposed section seeks to provide an explanation of providing information in electronic form.</p>
<p>20. Section 22. The Agency shall when required, provide or produce information that is in electronic form—</p>	<p>The proposed section seeks to Provide an explanation of providing</p>

Explanatory note for the National Electronic Single Window System Bill, 2021

<p>(a) in a paper or other non-electronic form and where the maintenance of the information cannot be assured, the authorised user who is required to provide or produce the information shall—</p> <p>(i) notify every person to whom the information is required to be provided or produced, of that fact; and</p> <p>(ii) if requested to do so, provide or produce the information in electronic form in accordance with the provisions of paragraph (b).</p> <p>(b) in electronic form, whether by means of an electronic communication or otherwise, if—</p> <p>(i) the form and means of the provision or production of the information assures the maintenance of the integrity of the information;</p> <p>(ii) the information is readily accessible for subsequent reference; and</p> <p>(iii) the person to whom information is required to be provided or produced consents to the provision or production of the information in an electronic form and, if applicable, by means of an electronic communication.</p>	<p>information in paper or electronic form when required.</p>
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Explanatory note for the National Electronic Single Window System Bill, 2021

<p>PART IV— ESTABLISHMENT AND FUNCTIONS OF THE KENYA TRADE NETWORK AGENCY</p>	
<p>21. Section 23. There is hereby established an agency known as the Kenya Trade Network Agency</p>	<p>The proposed section provides for establishment the Kenya Trade Network Agency as a State owned Corporation with rights to operate as a legal person.</p>
<p>(2) The Agency shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name be capable of—</p> <ul style="list-style-type: none"> (a) suing and being sued; (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property; (c) borrowing and making investments; (d) doing or performing all such other things or acts, including entering into contracts as may be necessary or expedient for the furtherance of this Act and which may lawfully be done by a body corporate. 	<p>The aim of the section is to strengthen the establishment of the Agency under the law</p>
<p>(3) The headquarters of the Agency shall be in Nairobi.</p>	
<p>22. Section 24. The functions of the Agency shall be—</p>	
<ul style="list-style-type: none"> (a) to establish and manage the System and to facilitate trade (b) to implement policies relating to the System (c) to integrate electronic systems of public and private entities involved in receipting, processing and approving documents relating to international trade transactions; (d) to provide an electronic platform for issuance of permits or approvals through the system; 	<p>The functions of the Agency are clearly stipulated under the Bill.</p>

Explanatory note for the National Electronic Single Window System Bill, 2021

<p>(e) to develop, manage, and promote interchange of electronic data for facilitation of trade;</p> <p>(f) to undertake and co-ordinate research and surveys in electronic commerce aimed at simplifying and harmonizing trade documentation;</p> <p>(g) to maintain an electronic database of all imported and exported goods and services and the levies, fees, duties and taxes charged on imported or exported goods and services;</p> <p>(h) to collect and provide trade statistics;</p> <p>(i) to plan, develop, monitor and evaluate training programmes for all stakeholders to ensure conformity with international best practices; and</p> <p>(j) to perform such other functions related to trade facilitation and other such duties as the Cabinet Secretary may, from time to time, assign to the Agency.</p>	<p>This Bill tasks the Agency with collection of data relevant to execution of its function, analyse and utilise it for the furtherance of cross border trade.</p> <p>The Bill mandates the Agency with the collection, organization, analysis, interpretation, and presentation of data and make it available to stakeholders</p>
<p>23. Section 25(1) There shall be a Board of Directors of the Agency which shall consist of—</p>	
<p>(a) a non-executive chairperson appointed by the President;</p> <p>(b) the Chief Executive Officer of the Agency appointed under section 29;</p> <p>(c) the Principal Secretary in the Ministry for the time being responsible for matters relating to finance or his representative;</p> <p>(d) the Principal Secretary in the Ministry for the time being responsible for matters relating to trade or his representative;</p>	<p>The Bill provides for the formation of the Board.</p>

Explanatory note for the National Electronic Single Window System Bill, 2021

<p>(e) the Principal Secretary in the Ministry for the time being responsible for matters relating to transport or his representative;</p> <p>(f) a representative from the Shippers Council of East Africa; and</p> <p>(g) three other members, not being public officers, appointed by the Cabinet Secretary by virtue of their knowledge and experience in matters relating to—</p> <p>(i) trade logistics;</p> <p>(ii) information communication technology; or</p> <p>(iii) finance or administration.</p>	
<p>(2) The chairperson and members of the Board, other than ex officio members shall hold office for a term of three years and shall be eligible for re-appointment for one further term.</p>	<p>This section provides for the term for Board members</p>
<p>24. Section 26(1) The Board shall be responsible for the administration, management and development of the Agency.</p>	
<p>(2) The Board shall have all the powers necessary for the performance of its functions under this Act, and in particular, but without prejudice to the generality of the foregoing, the Board shall have power—</p>	
<p>(a) to administer the assets and funds of the Agency in such manner and for such purposes as shall promote the best interests of the Agency;</p> <p>(b) to receive grants, donations or other moneys on behalf of the Agency;</p> <p>(c) to enter into association with such other institutions, persons, bodies or organizations within or outside</p>	<p>The Board of Directors has the final say in all matters that KenTrade engages in and has the responsibility of ensuring the Agency fulfils its mandate according to this Bill.</p>

Explanatory note for the National Electronic Single Window System Bill, 2021

<p>Kenya as the Board may consider desirable or appropriate in furtherance of the purposes for which the Agency is established;</p> <p>(d) to impose fees and charges as may be approved by the Cabinet Secretary, from time to time, for the use of any services provided by the Agency; and</p> <p>(e) to formulate and approve the strategies and plans for the Agency.</p>	<p>The Bill empowers the Board to introduce user fees and charges for services with approval from the Cabinet Secretary</p>
<p>25. Section 27. The Board may, by resolution either generally or in any particular case, delegate to a committee of the Board, or to any member, officer, employee or agent of the Agency the exercise of any powers or the performance of any of the functions or duties the Agency is authorized by this Act to exercise or perform.</p>	<p>The Board has powers to delegate authority, but it must be done in writing and in accordance to this Bill</p>
<p>26. Section 28 (1) There shall be a Chief Executive Officer of the Agency appointed by the Board who shall be responsible for the day to day operations and administration of the Agency.</p> <p>(2) A person shall qualify for appointment as a Chief Executive Officer if that person—</p> <p>(a) is a holder of at least an advanced relevant degree from a recognized university; and</p> <p>(b) has at least ten years working experience at a senior management level.</p> <p>(3) The Chief Executive Officer shall serve for a term of four years renewable for a further and final term of four years and on such other terms and conditions as specified in the instrument of appointment.</p>	<p>The CEO is the bridge between the Board of Directors and the daily operation of the Agency.</p> <p>The Bill provides for two terms for the CEO to enable overseeing and implementation of transformational Strategies</p>
<p>27. Section 29. The Agency may employ such other staff or agents as it considers necessary for the discharge of its functions and duties under this Act, upon such terms and</p>	<p>This section authorises the Agency to have employees in furtherance of its mandate</p>

Explanatory note for the National Electronic Single Window System Bill, 2021

<p>conditions as the Cabinet Secretary may, in consultation with the Board, determine.</p>	
<p>PART V—FINANCIAL PROVISIONS</p>	
<p>28. Section 30. The funds of the Agency shall consist of—</p> <p>(a) such moneys as may be appropriated by Parliament;</p> <p>(b) moneys that may accrue or vest in the Agency in the course of the performance of its functions under this Act; and</p> <p>(c) such grants, fees and other donations as may be made to the Agency.</p>	<p>This section outlines the sources of funding the Agency may rely on</p>
<p>29. Section 31. The financial year of the Agency shall be the period of twelve months ending on the thirtieth June of each year.</p>	
<p>30. Section 32(1) The Board shall, in accordance with the Public Finance Management Act, cause to be prepared budget estimates of the Agency for that financial year.</p> <p>(2) The annual budget estimates shall make provision for all the estimated expenditure of the Agency for the financial year concerned, and in particular, shall provide for the—</p> <p>(a) payment of retention, allowances and other charges in respect of the Board members and the staff of the Agency;</p> <p>(b) payment of salaries, pensions, gratuities and other charges in respect to retirement benefits to the staff of the Agency; and</p> <p>(c) proper maintenance, repair, and replacement of the equipment and other movable property of the Agency.</p>	<p>This section tasks the Board to adhere to the Public Finance Management Act when dealing with any matter that the Agency requires funds for</p>

Explanatory note for the National Electronic Single Window System Bill, 2021

<p>(3) The Board shall approve the annual budget estimates before the commencement of the financial year to which they relate and once approved, the estimates shall be submitted to the Cabinet Secretary for approval.</p> <p>(4) No expenditure shall be incurred for the purposes of the Agency except in accordance with the annual budget estimates approved under subsection (3) or with the authorization of the Board given with prior written approval of the Cabinet Secretary.</p>	
<p>31. Section 33(1) The Board shall cause to be kept all proper books and other records of accounts of income, expenditure, assets and liabilities of the Agency.</p> <p>(2) Within a period of three months after the end of each financial year, the Board shall submit to the Controller of Budget and the Auditor-General, the financial statements of the Agency, in respect of that year.</p>	<p>The Board is tasked with upholding best practices when accounting for money spent by the Agency.</p>
<p>Part VI – GENERAL PROVISIONS</p>	
<p>32. Section 34- The copyright in a work shall be deemed not to have been infringed by any of the following acts if they are carried out for the purposes of meeting a requirement under this Act—</p> <p>(a) the reproduction of a document from the System; and</p> <p>(b) the production of information by means of an electronic communication.</p>	<p>The Bill seeks to safeguard the Agency and all users of the System from copyright infringement and any litigation that may arise from such infringement if the said Copyright is used in accordance with the bill.</p>
<p>33. Section 35- (1) The Agency shall be responsible for—</p> <p>(a) the security of data in the System;</p> <p>(b) ensuring that information is confidential and is used only for the purpose to which it is intended;</p> <p>(c) taking precautions to ensure that electronic systems are secure from unauthorized access; and</p>	<p>The Bill mandates the Agency to ensure security of data in the system, ensuring that the information is confidential and used for the purpose to which it is intended. Further the Agency is to ensure that the integrity of the system is maintained and in case of any delays in payments to</p>

Explanatory note for the National Electronic Single Window System Bill, 2021

<p>(d) requiring user of the System to comply with applicable policies, written laws and Regulations relating to data protection.</p>	<p>inform the parties concerned promptly.</p>
<p>(2) Where there is an interruption in a method of payment relating to a transaction undertaken in the System, the Agency shall—</p>	
<p>(a) notify the users of any foreseeable and unforeseen service interruption within prescribed timelines; and</p>	
<p>(b) provide an alternative method of payment.</p>	
<p>34. Section 36- (1) No suit, prosecution or other legal proceedings shall lie against the Agency or any officer or employee of the Agency for anything done or intended to be done in good faith under this Act or any rule or regulation made thereunder.</p>	<p>The Bill protects the agency and its officers from legal liability in the discharge of their official duties and done in good faith. In the same breath the bill does not insulate the agency from liability where wrongful acts are committed and it further stipulates that where such an action succeeds in a court of law or any other tribunal, compensation shall be paid out from the funds of the agency.</p>
<p>(2) The provisions of this section do not relieve the Agency to pay compensation or damages to any person for any injury caused to them, their property or any of their interests caused by bad faith in the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works of the Agency.</p>	
<p>(3) Any expenses incurred by a person in any suit or prosecution brought against them in any court, in respect of any act which is done or purported to be done by them under the direction of the Agency, shall, if the courts finds that the act was not wilful default, be paid out of the funds of the Agency unless the person recovers the expenses in such suit or prosecution.</p>	
<p>35. Section 37-A person who contravenes the provisions of this Act commits an offence and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings or to an imprisonment for a term not exceeding one year or to both.</p>	<p>The Bill creates a general penalty to any person who contravenes its provisions. Such a contravention shall be treated as an offence punishable to a fine not exceeding Five hundred Thousand or to</p>

Explanatory note for the National Electronic Single Window System Bill, 2021

	imprisonment for a term not exceeding one year or to both.
36. Section 38- (1) Despite the provisions of section 37, the Agency may sanction a person who contravenes any provision of this Act.	The Bill gives powers to the Agency to sanction a person who contravenes the provisions, these sanction can be in the form of a. Blacklisting a user b. Suspension of a user c. Any other sanction the Agency deems fit.
(2) The sanctions under subsection (1) may include—	
(a) blacklisting of a user of the System;	
(b) suspension of access to the System; or	
(c) any other sanction that the Agency may consider fit to impose from time to time,	
Provided that the sanctions do not impede trade for unreasonable period of time.	
(3) A person whose access to the System has been suspended under this section may be given an opportunity to re-access the System, under conditions specified by the Agency.	
37. Sections 39- (1) The Cabinet Secretary may, in consultation with the Agency, make Regulations generally for the better carrying out of the purposes and objectives of this Act.	The Bill gives powers to the Cabinet Secretary in consultation with the Agency to make regulations to achieve the objectives of the Act once passed. These regulations will be used to outline procedures in the administration of the agency, creation of relevant trade policies, integration of trade systems, registration requirements and relevant fees to be paid to the agency and the form of such payments.
(2) Without prejudice to the generality of subsection (1), the Regulations may prescribe—	
(a) administrative measures relating to the use of the System;	
(b) the integration of paperless customs clearance with other regulatory bodies issuing trade, import, export or transit-related permits and certificates;	
(c) the extension of the System to serve entire trade and logistics communities within airports, seaports and dry ports;	
(d) the creation of national logistics platform interlinking the department responsible for	

Explanatory note for the National Electronic Single Window System Bill, 2021

customs, trading companies and the service sectors;	
(e) the interconnection and integration of national single windows into bilateral or regional information exchange platforms;	
(f) the timelines for the processing of any applications under this Act;	
(g) procedures for registration, registrable particulars and other details relating to registration of users of the System;	
(h) fees and levies;	
(i) modes of payment of fees and levies;	
(j) the conditions to be complied with by users of the System; the process of accessing the information from the System; and	
(k) any other matter required in order to achieve the objectives of the Act.	
38. Section 40- The Kenya Trade Network Agency Order, 2010 is hereby revoked.	The Bill repeals Legal Notice No. 6 of 2011 in entirety. Once passed the Act and regulations will be legal framework for the System and the Agency
39. Section 41- The Acts specified in the Schedule are amended in the manner specified in that Schedule.	The Bill amends various existing Acts and, in the manner, so specified in the Schedule.


HON. (AMB.) UKUR YATANI, EGH

CABINET SECRETARY/ NATIONAL TREASURY & PLANNING



DDC letter
17/04

**MINISTRY OF INDUSTRIALIZATION, TRADE AND ENTERPRISE DEVELOPMENT
STATE DEPARTMENT FOR TRADE AND ENTERPRISE DEVELOPMENT
OFFICE OF THE PRINCIPAL SECRETARY**

Telephone: +254-(0)20-3315001/2-4
Web: www.trade.go.ke
Email: ps.trade@trade.go.ke
When replying please quote

TELPOSTA TOWERS
KENYATTA AVENUE
P.O. Box 30430 - 00100
GPO NAIROBI - KENYA

Ref. No. MOITED/SDT/1/95/152

15th March, 2022

Date:.....

Mr. Michael Sialai, EBS
The Clerk of the National Assembly
Parliament Buildings
NAIROBI

Nuri Kiteh
pls facilitate
4/1/22
17/3/22

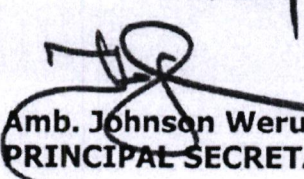
Dear Mr. Sialai

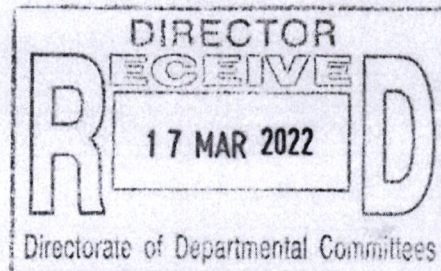
**RE: INVITATION FOR A MEETING WITH THE DEPARTMENTAL
COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES TO
DISCUSS THE NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM
BILL 2021.**

Reference is made to your letter Ref.No.NA/DDC/TRADE/2022/009 dated 2nd
March 2022.

This is to forward our submission on the National Electronic Single Window
System Bill 2021. Further we request the rescheduling of the date of
appearance to the committee for the presentation of our submission.

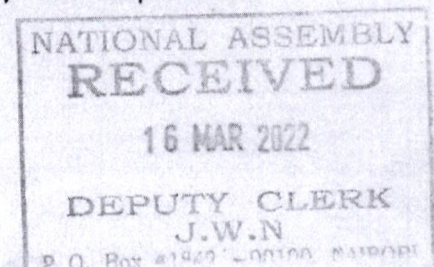
Yours Sincerely


**Amb. Johnson Weru, CBS
PRINCIPAL SECRETARY**



Copy to: Ms. Betty C. Maina, EGH
Cabinet Secretary
Ministry of Industrialization, Trade and Enterprise Development
NAIROBI.

Hon. Ali Adan Haji
Chairman – Committee on Trade, Industry and Cooperatives
National Assembly
Parliament Buildings
NAIROBI



STATEMENT BY BETTY C. MAINA, CABINET SECRETARY, MINISTRY OF INDUSTRIALIZATION, TRADE AND ENTERPRISE DEVELOPMENT TO THE PARLIAMENTARY COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES ON THE NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM BILL, 2021

1. The efficiency with which information can be submitted to government agencies is becoming a key factor in the competitiveness of firms or companies involved in cross border activities.
2. On a daily basis, international traders have to prepare and submit increasing amounts of information to various governmental controlling authorities, with each authority often having its own specific automated systems and paper forms. These extensive information requirements can become a significant obstacle to business and may hinder the development of international trade.
3. The Kenya TradeNet System is an online platform that serves as a single-entry point for parties involved in international trade and transport logistics to lodge documents electronically, for processing, approvals and to make payments electronically for fees, levies, duties and taxes due to the Government, on goods imported or exported in the country.
4. The National Electronic Single Window System Bill 2021 is intended to provide a legal framework for strengthening electronic transactions through establishment of the National Electronic Single Window System and the Kenya Trade Network (KenTrade) Agency.
5. The Bill provides for a system that allows for electronic lodging of import and export documents and electronic payment of fees and charges. This will greatly contribute to reduction of the cost of doing business for importers and exporters as it will make it possible for standardization of documentation for all agencies, single access platform for international trade and removal of paper-based procedures and bureaucracies.
6. The Bill provides for improved visibility and clarity of procedures as importers and exporters and all other stakeholders will be able to trace their transactions electronically using SMS and email notifications.

7. The Bill also provides for the much-needed collaboration among the various public entities in information sharing and performing trade processes using the National Electronic Single Window System.
8. Kenya is a member of the World Trade Organization (WTO) and is a signatory to the WTO Trade Facilitation Agreement. The establishment and implementation of the National Electronic Single Window System Bill once enacted will lead to Kenya fulfilling most of the requirements of the provisions of the WTO Trade Facilitation Agreement.
9. After careful consideration of the Bill, the following salient features that require to be reviewed were noted: -
 - The Bill duplicates some roles of the State Department for Trade and Enterprise Development as outlined in the Executive Order No. 1 of 2020. Such duplication would negate the intent of synergy between all stakeholders, in the delivery on their respective mandates, foreseen in the Executive Order;
 - The Bill also proposes the Agency to undertake functions that are already being handled by other government Departments and Agencies;
 - The Composition of the Agency also has an issue as it proposes for inclusion in the Board of Directors a private sector institution by name.

Proposed Amendments

10. In light of the foregoing, the following specific amendments are proposed for consideration by the Committee: -

Part	Clause of the Bill	Proposed amendment	Justification
IV	24 (a) establish and manage the system and facilitate trade	Delete " <i>and facilitate trade</i> ".	<ul style="list-style-type: none"> • Trade facilitation is the core mandate and function of the State Department for trade and Enterprise Development (SDT & ED). • The State Department for trade and Enterprise

			Development is also the Chair of the National Trade Facilitation Committee (NTFC) and coordinates the implementation of the WTO Trade Facilitation Agreement in Kenya.
	24(g) maintain an electronic database of all imported and exported goods and services and the levies, fees, duties and taxes charged on all imported or exported goods and services	This function should be expunged from the Bill.	<ul style="list-style-type: none"> This is a function of the Kenya Revenue Authority
	24 (h) collect and provide trade statistics	This function should be expunged	<ul style="list-style-type: none"> This function is already being undertaken by the Kenya Bureau of Statistics and the State Department for Trade & Enterprise Development through the National E-trade Portal.
	24(i) Plan, develop, Monitor and evaluate training programmes for all stakeholders to ensure conformity with international best practice.	This function needs to be qualified to include " National Single Window System stakeholders "	<ul style="list-style-type: none"> The function as-is, is very general and requires to state clearly the stakeholders for who the training programmes are meant.
	24 (j) perform such other functions related to trade facilitation and other such duties as the Minister may, from time to time, assign to the Agency.	The statement ' <i>perform such other functions related to trade facilitation</i> ' should be expunged and replaced with " perform such other functions related to management of the system "	<ul style="list-style-type: none"> Trade facilitation is the core mandate and function of the State Department for trade and Enterprise Development. The State Department for trade and Enterprise Development is also

			the Chair to the National Trade Facilitation Committee (NTFC) and coordinates the implementation of the WTO Trade Facilitation Agreement in Kenya.
	25 (1) (f) A representative from the shippers Council of East Africa	This should be changed to read " <i>a representative of a private sector umbrella organization within the shipping industry in Kenya.</i> "	<ul style="list-style-type: none"> • Naming a private sector organization in the Bill is risky as it shuts out other private sector organizations from being appointed to the Agency Board. • There is need to provide an opportunity for more private sector member organizations to be appointed in the board and not just from one organization.



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

Office of the Commissioner General

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KRA/5/1002/5(7042)

21st December 2021

Mr. Michael Sialai, EBS
Clerk of the National Assembly
P. O. Box 41842 - 00100
Parliament Buildings
Nairobi

RECEIVED
DIRECTOR GENERAL
10 JAN 2022
Directorate of Departmental Committees

NATIONAL ASSEMBLY RECEIVED
27 DEC 2021
CLERK'S OFFICE
P. O. Box 41842

Mr. Mithunga, PCA
Pse degt
Mithunga 14/1/22
JSD/DC

Dear Michael,

COMMENTS ON THE NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM BILL, 2021

We have reviewed the contents of the Bill and noted that it requires amendments in various sections to avoid conflict of roles between the implementing Agency (KENTRADE) and other Agencies and Ministries responsible for the core functions. An example is the lack of clarity on the role of KENTRADE in the processing and approval of Customs documentation which is the mandate of Kenya Revenue Authority as governed by EACCMA 2004.

In our review, the bill should promote harmony in the operations of the various Agencies and should not introduce conflict and confusion which will defeat its purpose. As currently drafted, the bill will greatly undermine the effectiveness of KRA in the role of revenue mobilization, border security and trade facilitation.

KRA has provided detailed comments on the bill for consideration in Parliament and stands ready to appear for oral submission on the same.

Clause	Clause Wording	Comment/Proposal	Reason/ Justification
New	There is no clause on the object and purpose of the Act	Insert a new clause 3 in the Bill that provides for the object and purpose of the Act as follows; <i>'The objective of this Act is to provide a single platform for facilitation of trade through integration of systems of Government and private entities'</i>	Stating the objective of a legislation is important as it sets out the main purpose why the legislation is being enacted.
New	Application of the Act. There is no clause in the bill indicating the scope of application of the Act	Insert a new clause 4 in the Bill that provides the scope of application of the Bill as follows; <i>"This Act shall apply to Government entities, persons importing or exporting goods and to persons involved in domestic trade."</i>	The clause on scope of application indicates persons who are required to comply with the Act.
New	Insert a new clause providing for the Guiding Principles for Users of the System.	The new clause to read as follows; <i>"The users of the System and the Agency shall be guided by the following principles;</i>	These guiding principles are relevant to show the spirit and overall objective of the law

Clause	Clause Wording	Comment/Proposal	Reason/ Justification
		<p>(a) <i>Simplicity and practicability.</i></p> <p>(b) <i>Cost effectiveness</i></p> <p>(c) <i>Non-discrimination.</i></p> <p>(d) <i>Consistency and predictability.</i></p> <p>(e) <i>Modernization and use of new technology</i></p> <p>(f) <i>Due process</i></p> <p>(g) <i>Cooperation</i></p>	sought to be enacted.
3 (2) a	<p>(2) The system shall serve as a single entry point and platform for any person involved in trade and transport to---</p> <p>(a) Lodge documents electronically including import or export documents for processing and approval</p> <p>(b) Facilitate the electronic payment of fees and levies, due to the government, on goods imported or exported for transactions submitted through the system.</p>	<p>Renumber the Clause to (5)(2)(a).</p> <p>(a) Lodge documents electronically for processing and approval <i>as provided for under the respective laws implemented by government departments, Ministries and agencies.</i></p> <p>(b) We recommend deletion of the clause</p>	<p>The customs import and export system is managed under the provisions of a regional law (EACCMA 2004) that already provides for handling of electronic transactions. Even if enacted into law, the law will not supersede the EACCMA, 2004 which is Treaty Law superior to domestic law.</p> <p>The process for lodging and processing of import and export documents should therefore clarified under a new clause providing for an exception to avert confusion and mis-interpretation.</p>
5(3)	New	<p>Provide for an exception that specifies the process of lodging and processing of Customs imports and exports documents to provide as follows;</p> <p><i>"Despite the provisions of Section 5(3)(a) and (b), the documents for import and export of goods shall be lodged and processed through the Customs System and thereafter dispatched to the System."</i></p>	<p>These documents are critical base documents for computation of correct taxes and applying various customs processes e.g. customs security bonds, remission, exemptions etc. Lodging these documents through the System poses a challenge to Customs Department as the Department does not have control.</p>
4 (c)	To enable the standardization of documents and single decision making for customs releases and clearance.	We propose deletion of the provision.	Customs documents are standardized (Import Declaration Form, Single Administrative Document) under regulations 29, 48, 89, 104, 161, 165 and 171 of

Clause	Clause Wording	Comment/Proposal	Reason/ Justification
			the East African Community Customs Management Regulations 2010 (<i>EACCMR 2010</i>) which is derived from Treaty Law superior to domestic laws.
4 (e)	To facilitate coordination and partnership among the <i>department</i> responsible for customs, other relevant government ministries, departments or agencies and industry players dealing with trade or trade facilitation.	To facilitate coordination and partnership with the <i>Government entity</i> responsible for customs, other relevant government ministries, departments or agencies and industry players dealing with trade or trade facilitation	The coordination is not limited to Customs department but the Authority as a whole.
4(f)	To facilitate trade related payments of fees and levies	We propose deletion of the provision and renumbering of the paragraphs accordingly.	There seems to be a repetition of the contents of the clause when compared with Clause 3(2)(b) of the Bill
	New sub-clause	Insert a new sub-clause immediately after the current clause 5 to require the Kenya Trade Network Agency to commit to maintain the integrity and security of the System. This is taking into account that the Agency is responsible for administering the System. The clause to read as follows; <i>"The Agency commits to maintain the integrity and security of the system."</i>	The Agency has the overall role of ensuring the system is secure and that the data submitted through the system is reliable and not altered. Clause 6 of the Bill requires cooperation of other Government agencies with the Kenya Trade Network Agency without any commitment from the Agency on the same issues.
7(2)	"The processes and technical aspects of the system shall <i>conform to</i> the following principles...."	Propose review of the clause to read as follows; "The processes and technical aspects of the system shall be <i>guided by</i> the following principles....." <i>Include additional principles such as;</i> <ul style="list-style-type: none"> • <i>Modernization and use of new technology</i> • <i>Practicability</i> • <i>Ability to seamlessly integrate with other systems</i> 	The system is not ' <i>to conform</i> ' to the principles but ' <i>to be guided by</i> ' the specified principles.

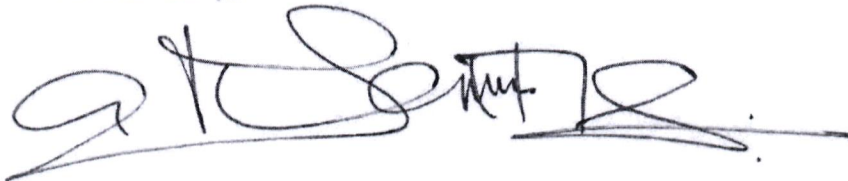
Clause	Clause Wording	Comment/Proposal	Reason/ Justification
8(a)	The Agency may; (a) (b) Facilitate, through the System, the collection of any other dues provided for under any written law by relevant Government Ministries, departments and agencies	Since the collection of dues is based on agreement of the agencies, we propose review of the clause to read as follows; <i>(b) Facilitate, through the System, the collection of any other dues as agreed by relevant Government Ministries, departments and agencies as provided for under any written law.</i>	For certainty and clarity
13 (2)	The System shall provide a platform for – (a) Making a request for registration or deregistration; (b) Making an application; (c) Giving, sending, or serving a notification (d) Making, varying or cancelling a transaction; (e) Deregistration of users; and (f) Any other mater that is relevant to the objects of the Act	Review the clause to read as follows- <i>“The System shall enable the users of the platform to— (a) Make a request for registration or deregistration; (b) Make an application; (c) Give, send, or serve a notification (d) Make, vary or cancel a transaction; and (e) Carry out any other mater that is relevant to the objects of the Act.”</i>	For clarity as the System is not capable of ‘providing a platform....’ but capable of ‘enabling users...’ since this applies to a non-living thing.
	Insert a new clause 13(4) in the Bill to provide for deregistration by the Agency where the user contravenes the laws or regulations	The new clause to read as follows; <i>“The System shall enable the Agency to deregister Users who contravene the laws, regulations or procedures.”</i>	To provide a legal framework for deregistering users who contravene the law.
14(1)	A signature, a statement or a document that requires to be notarized, acknowledged, verified or made under oath shall be fulfilled in the System if an advanced or secure electronic signature of a person authorized by law to sign or notarize the document is attached, incorporated or logically associated with the electronic record.	Review the clause to read as follows <i>“A signature, a statement or a document that requires to be notarized, acknowledged, verified or made under oath shall be fulfilled in the System if a secure electronic signature of a person authorized by law to sign or notarize the document is attached, incorporated or logically associated with the electronic record.”</i>	The use of the word advanced signature does not have significance. Use of the words “secure electronic signature” is adequate.
14(3)	Where a person is required or permitted to provide a certified copy pf a document and the	Review the clause to read as follows; <i>“Where a person is required or</i>	To ensure clarity on the use of electronic signature in the system. The use of the word “advanced

Clause	Clause Wording	Comment/Proposal	Reason/ Justification
	document exists in paper or other physical form, that requirement shall be deemed to have been fulfilled if an electronic copy of the document is certified to be a true copy of the document and the certification is confirmed with an advanced electronic signature in the System.	<i>permitted to provide a certified copy of a document and the document exists in paper or other physical form, that requirement shall be deemed to have been fulfilled if an electronic copy of the document is certified to be a true copy of the document and the certification is confirmed by an electronic signature of the person authorized to certify the document which is verified in advance in the System."</i>	<i>electronic signature</i> causes uncertainty as to what it means.
15(3)	For the purposes of subsection (2), a document is sealed if the document includes the ' <i>advanced electronic signature</i> ' of the person authorized to seal the documents	Review the clause to read as follows; <i>"For the purposes of subsection (2), a document is sealed if the document includes the electronic signature of the person authorized to seal the documents"</i>	The use of the word " <i>advanced</i> " in the bill does not have any significance. There is not clarity on what mischief will be addressed by the Bill when it emphasizes the use of the words an " <i>advanced electronic signature</i> "
23(2)	The agency shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name be capable of – (a) suing and being sued; (b) <i>taking</i> , purchasing or otherwise acquiring, holding and disposing of movable and immovable property; (c) borrowing and making investments; (d) doing or performing all such other things or acts including entering into contracts as may be necessary or expedient for the furtherance of this Act and which may lawfully be done by a body corporate.	Review the clause to read as follows; <i>"The agency shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name be capable of –</i> <i>(a) suing and being sued;</i> <i>(b) purchasing or otherwise acquiring, holding and disposing of movable and immovable property;</i> <i>(c) borrowing and making investments;</i> <i>(d) entering into contracts; and</i> <i>(e) performance of its functions under the Act or as may be required under any other written law.</i>	For simplicity of the law and clarity. It is not clear what the use of the word ' <i>taking</i> ' means in paragraph b.
25(b) and (g)	There shall be a Board of Directors of the Agency which shall consist of –	Review the Clause to read as follows;	To conform to the requirements of the constitution on

Clause	Clause Wording	Comment/Proposal	Reason/ Justification
	(a)... (b)The Chief Executive Officer of the Agency appointed under Section 8. (g) Three other members, not being public officers, appointed by the Cabinet Secretary by virtue of their knowledge and experience in matters relating to- ...	“There shall be a Board of Directors of the Agency which shall consist of – (a)... (b)The Chief Executive Officer of the Agency competitively recruited and appointed under Section 8. (g) Three other members, not being public officers, competitively recruited and appointed by the Cabinet Secretary by virtue of their knowledge and experience in matters relating to- ...	competitive recruitment of public officers for public institutions.
25(2)	The Chairperson and members <i>of the appointed</i> under subsection (1)(f) and (g) shall hold office for a term of three years and shall be eligible for re-appointment for one further term.	The Chairperson and members <i>of the Board appointed</i> under subsection (1)(f) and (g) shall hold office for a term of three years and shall be eligible for re-appointment for one further term.	To remove the drafting error of ‘ <i>omission</i> ’ of the word ‘ <i>Board</i> ’ noted in the Section.
25(3)	New	A member of the Board shall cease to be a member by the following; “a) Resignation in writing to the Cabinet Secretary; (b) death; (c) Revocation of appointment by the Cabinet Secretary for contravention of any written law; (d) Dissolution of the Agency;	Provide basis for a cessation of a term of office of a member of the Board.
28(1)	There shall be a Chief Executive Officer of the Agency appointed by the Board who shall be responsible for the day to day operations and administration of the Agency	Review the clause to read as follows; “There shall be a Chief Executive Officer of the Agency competitively recruited and appointed by the Board who shall be responsible for the day to day operations and administration of the Agency”	To conform to the requirements of the Constitution on competitive recruitment before appointment.
28(2)	A person shall qualify for appointment as a chief Executive Officer if that person – (a) Is a holder of at least an advanced relevant degree from a university recognized in Kenya;	Review the Clause to read as follows; “Is a holder of at least a relevant postgraduate degree from a university recognized in Kenya;	The use of the words “ <i>an advanced relevant degree</i> ’ creates uncertainty as to the level of advancement by a candidate in the studies.
35	The Agency shall be	Review and merge with Clause 24	For clarity and simplicity

Clause	Clause Wording	Comment/Proposal	Reason/ Justification
	responsible for – (a) The security of data in the system; (b) Ensuring that information is confidential and is used only for the purpose to which it is intended; (c) Taking precautions to ensure that electronic systems are secure from unauthorized access; and (d) Requiring user of the system to comply with applicable policies, written laws and regulations relating to data protection.	to provide for functions and responsibilities of the Agency	of the law.

Yours sincerely,



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