

NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM BILL, 2016

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A Bill for

AN ACT of Parliament to establish the National Electronic Single Window System; to facilitate for international trade; to provide for electronic transactions and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the National Electronic Single Window System Act, 2016.

Interpretation

2. In this Act unless the context otherwise requires—

“addressee” in respect of a data message, means a person who is intended by the person originating the data message to receive the data message, but not a person acting as an intermediary in respect of the data message;

“advanced electronic signature” has the meaning assigned to it under the Kenya Information and Communications Act Cap 411 A;

“Agency” means the Kenya Trade Network Agency established under the Legal Notice number 6 of 2011;

“Cabinet Secretary” means the Cabinet Secretary responsible for finance;

“computer” has the meaning assigned to it under the Kenya Information and Communications Act

“Commissioner of customs” means the government agency for the time being responsible for the control and management of the customs and for the collection of, and accounting for, customs and excise revenue.;

“data” has the meaning assigned to it under the Kenya Information and Communications Act;

“data message” means data generated, sent, received or stored by computer means and includes—

- (a) voice, where the voice is used in an automated transaction; and
- (b) a stored record;

“disclosure” in relation to personal information, includes the disclosure of information extracted from such data and the transfer of such data but does not include a disclosure made directly by a user to an employee or agent

for the purpose of enabling the employee or agent to carry out their duties;

“electronic form” has the meaning assigned to it under the Kenya Information and Communications Act;

“electronic record” has the meaning assigned to it under the Kenya Information and Communications Act;

“electronic signature” has the meaning assigned to it under the Kenya Information and Communications Act;

“electronic communication” means a communication by means of data messages;

“electronic records system” includes the computer system or other similar device by or in which data is recorded or stored and the procedure for recording and storing of electronic records;

“electronic transaction” means the exchange of information or data, the sale or purchase of goods or services, between businesses, households, individuals, governments, and other public or private organizations, conducted over computer-mediated networks;

“e-wallet” means an online prepaid account which allows end users to deposit money into an account opened and maintained by the Agency in the end user’s name for use in paying transactions;

“information” includes data, text, images, sounds, codes, computer programmes, software and databases;

“information system” means a system for generating, sending, receiving, storing, displaying or otherwise processing data messages and includes the internet or any other information sharing system;

“intermediary” means a person who, on behalf of another person, whether as agent or not, sends, receives or stores a particular data message or provides other services with respect to that data message;

“line ministries and agencies” means government agencies, other than the customs administrator, which are responsible for the administration and enforcement of trade laws and regulations relating to the release and clearance of cargo.

“originator” means a person by whom or on whose behalf, a data message is sent or generated prior to storage, but does not include a person acting as an intermediary in respect of that data message;

- Objects
3. The object of this Act is provide a legislative framework for a national electronic window system to—
 - (a) facilitate single point of submission and receipt of trade data and information;
 - (b) enable synchronized processing of data and information;
 - (c) enable standardization of documents and single decision-making for customs release and clearance;
 - (d) facilitate electronic transactions cross border trade and remove legal and operational barriers to electronic transactions;
 - (e) facilitate coordination and partnership among commissioner of customs and other relevant line ministries, agencies, and industry players dealing with international trade and trade facilitation.

PART II—ESTABLISHMENT AND ADMINISTRATION OF THE NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM

- Establishment of the System
4. (1) There is established a National Electronic Single Window System known as the Kenya TradeNet.
 - (2) The system shall serve as the single entry point and a platform for persons involved in international trade to—
 - (a) lodge import and export documents electronically, for processing and approval; and
 - (b) facilitate electronic payments for transactions lodged through the system.
 - (3) Without prejudice to sub section (2), the system may be used by persons transacting in domestic trade.

Administration of the system

 5. (1) The system shall be administered by the Kenya Trade Network Agency established under the Legal Notice number 6 of 2011.
 - (2) In addition to the functions set out under Paragraph 5 of the Legal Notice number 6 of 2011, the Agency shall—

- (a) integrate electronic systems of public and private entities involved in receiving, processing and approving documents relating to international trade transactions;
- (b) provide an electronic data interface for issuance of permits, approvals and exemptions through the system;
- (c) maintain an electronic database of exports and imports and a tracking system of goods in transit;
- (d) maintain and upgrade the system to provide e-commerce solutions in trade;
- (e) promote the use the system by line ministries, agencies and traders and ensure that it is operational every day on a 24-hour basis; and
- (f) be responsible to the government and industry players for ensuring that service levels and timelines for processing of electronic documents are met.

(3) It shall be the duty of every line ministry and government agency to co-operate with, and provide necessary information to the Agency in accordance with this Act.

(4) The Agency shall make use of information and communication technology that is in line with relevant internationally accepted standards in the development and implementation of single window systems.

(5) The Agency shall work in partnership with commissioner of customs, line ministries, agencies, and industry players to support the implementation of the national single window system.

Technical aspects
of the system

6.
 - (1) The Agency shall adopt relevant internationally accepted standards, procedures, documents, technical details and formalities for the effective implementation of the national single window system.
 - (2) All processes and technical aspects of the system shall conform to the following principles—
 - (a) transparency in relation to procedures being undertaken through the system;
 - (b) security of trade data information exchange;
 - (c) simplicity and accessibility;
 - (d) confidentiality and privacy;

- (e) reliability, trust and consistency;
- (f) scalability and interoperability; and
- (g) efficiency.

Payment of levies,
duties etc.

7. (1) The Agency shall, subject to approval by the National Treasury, have the power to—
 - (a) levy nominal charges for its services;
 - (b) facilitate the collection of levies, taxes and duties;
 - (c) impose penalties and surcharges in relation to its services; and
 - (d) facilitate the collection of any other dues provided under any law.
- (2) For purposes of facilitating the collection of payments under subsection (1), the Agency may put in place measures to enable payment in the prescribed manner by—
 - (a) credit card where an electronic interface for online payment has been made available;
 - (b) debit card where an electronic interface for online payment has been made available;
 - (c) mobile money transfer;
 - (d) debiting an e-wallet account;
 - (e) cash deposit into any specified account of a designated bank;
 - (f) electronic funds transfer;
 - (g) real-time gross settlement;
 - (h) online banking; or
 - (i) any other authorised electronic payment system.
- (3) A person making payment under subsection (1) shall do so in the prescribed manner.
- (4) For purposes of subsection (1) the term “fee” includes levies, penalties, taxes, duties, surcharge and such other charges as may be collected or imposed under any written law.

Registration of users

8. (1) Any person intending to engage in the import and export of goods shall apply to the Agency for registration as a user of the single window system.
(2) An application for registration as a user of the system shall be in the prescribed form.
(3) The Agency shall keep and maintain an electronic register of the registered users of the system and issue a notification of registration to a user of the system.
(4) The Cabinet Secretary shall, in consultation with the Agency, make regulations on the procedures for registration, registrable particulars and other details necessary to give effect to this section.

Regional cooperation

9. (1) For purposes of implementing a regional single window system, the Agency shall be the national lead agency.
(2) The Agency shall put in place a suitable gateway model for purposes of establishing a regional single window system.

PART III— IMPROVING CERTAINTY IN RELATION TO ELECTRONIC INFORMATION AND ELECTRONIC COMMUNICATIONS IN THE NATIONAL SINGLE WINDOW SYSTEM

Agency to be responsible for electronic transactions relating to trade

10. (1) The provisions of Part VIA of the Kenya Information and Communications Act relating to electronic transactions and cyber security shall apply to the national single window system established under this Act.
(2) Despite sub section (1), the Agency shall, in relation to electronic transactions conducted under the national single window system, discharge the functions and exercise the powers given to the Communications Authority under Part VIA of the Kenya Information and Communications Act.

Legal effect of electronic records

11. Where information in the national single window system is —

- (a) submitted in electronic form;
- (b) is communicated by electronic means; or
- (c) is referred to in an electronic communication,

the information shall have the same legal effect as if it were submitted in physical form.

Electronic submission of documents

12. (1) A legal requirement under any law that information or document be in writing, is met if the information or document in the national single window system is—

(a) produced, recorded or retained or presented in the form of a data message; and

(b) readily accessible in a manner which is usable for subsequent reference.

(2) The agency shall provide multiple copies of the information to the same person at the same time by providing a single electronic version of the information.

(3) The National Single Window shall provide a platform for —

(a) making an application;

(b) making or lodging a claim;

(c) giving, sending, or serving a notification;

(d) lodging a return;

(e) making a request;

(f) making a declaration;

(g) lodging or issuing a certificate;

(h) making, varying, or canceling an entry;

(i) lodging an objection;

(j) giving a statement of reasons; or

(k) any other requirement.

(4) For the avoidance of doubt, 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 national single window system, need not be complied with in order to meet a legal requirements of this section.

Notarization, acknowledgement and certification

13. (1) A requirement for a signature, statement or document to be notarized, acknowledged, verified or made under oath, is fulfilled in the National Single window system if an advanced or secure electronic signature of a person authorised by law to sign or notarize the document is attached, incorporated or is logically associated with the electronic record.

- (2) Where a person is required or permitted to provide a certified copy of a document which is in electronic form in the national single window electronic system, the requirement is fulfilled if the person provides a printout certified to be a true copy of the document or information.
- (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 is 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 in the national single window electronic system.
- Requirement to compare originals**
- 14.** The comparison of a document in the national single window system with an original document may be met by comparing that document with an electronic form of the original document if the electronic form reliably assures the maintenance of the integrity of the document.
- Other legal requirements**
- 15.** (1) A requirement for multiple copies of a document in the National Single Window System to be submitted to a person at the same time is fulfilled by submitting a single data message which is capable of being reproduced by the person to whom the data message is submitted.
- (2) Where a document National Single Window System is required to be sealed and the law does not prescribe the method or form in which it is to be sealed, the document may be sealed by electronic means .
- (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.
- Time of dispatch**
- 16.** An electronic communication in the National Single Window System is taken to be dispatched at the time the electronic communication first enters an information system outside the control of the originator.
- Time of receipt**
- 17.** An electronic communication in the National Single Window System is taken to be received—
- (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
- (b) in any other case, at the time the electronic communication comes to the attention of the addressee.
- Place of dispatch**
- 18.** An electronic communication in the National Single Window System is taken to be dispatched from—

- (a) the originator's place of business; or
- (b) if the originator of a document in the National Single Window System has more than one place of business—
 - (i) the place of business that has the closest relationship with the underlying transaction; or
 - (ii) if there is no place of business to which subparagraph (i) applies, the originator's principal place of business; or
- (c) in the case of an originator who does not have a place of business, the originator's ordinary place of residence.

Place of receipt

19. An electronic communication using the National Single Window System is taken to be received at—

- (a) the addressee's place of business;
- (b) if the addressee has more than one place of business—
 - (i) the place of business that has the closest relationship with the underlying transaction; or
 - (ii) if there is no place of business to which subparagraph (i) applies, the addressee's principal place of business; or
- (c) in the case of an addressee who does not have a place of business, the addressee's ordinary place of residence.

When integrity of information maintained

20. For the purposes of this Part, the integrity of information is maintained in the National Single Window System only if the information has remained complete and unaltered, other than the addition of any endorsement, or any immaterial change, that arises in the normal course of communication, storage, or display.

Acknowledgement of receipt of data message.

21. (1) Subject to this section, an acknowledgement of receipt of a data message in the National Single Window System is not necessary to give legal effect to the data message.

(2) Where the originator in the National Single Window System specifies that the data message is conditional on receipt of the acknowledgement, the data message is taken as not sent, until the acknowledgement is received by the originator.

(3) Where the originator in the National Single Window System specifies that the data message is conditional on receipt of an acknowledgement and the acknowledgement is not received by the originator within the time

specified or agreed upon or, if no time has been specified or agreed upon, within a reasonable time, the originator may—

- (a) give notice to the addressee stating that an acknowledgement has not been received and specify a reasonable time within which the acknowledgement should be received; and
- (b) upon notice to the addressee, treat the data message as though it has never been sent or exercise any other rights that he or she may have in respect of the data message.

(4) Where the originator in the national single window system does not specify that the acknowledgement is to be given in a particular form or by a particular method, the acknowledgement may be given by—

- (a) any communication from the addressee, automated or otherwise; or
- (b) any conduct of the addressee which is sufficient to indicate to the originator that the addressee received the data message.

(5) Where the originator in the national single window system receives the acknowledgement of receipt from the addressee, unless there is evidence to the contrary it is presumed, that the addressee received the data message.

(6) The presumption in subsection (5) does not imply that the content of the electronic record corresponds to the content of the record received.

(7) Where the acknowledgement states that the related data message fulfilled the technical requirements, either agreed upon or set forth in applicable standards, it is presumed, unless evidence to the contrary is adduced, that those requirements have been met.

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

Requirement
s relating to
retention of
information

22. In addition to the requirements of section 83I of the Kenya Information and Communication Act, if a person is required to retain information that is contained in the National Single Window System electronic communication—

- (a) the person must also retain such information obtained by that person as enables the identification of—
 - (i) the origin of the electronic communication;

Requirement
to provide or
produce
information in
paper form

- (ii) the destination of the electronic communication; and
- (iii) the time when the electronic communication was sent and the time when it was received; and
- (b) the information referred to in paragraph (a) must be readily accessible so as to be useable for subsequent reference.

23. 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—

- (a) the form and means of the provision or production of the information reliably assures the maintenance of the integrity of the information, given the purpose for which, and the circumstances in which, the information is required to be provided or produced; the information is readily accessible so as to be usable for subsequent reference; and
- (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, if applicable, by means of an electronic communication.

Requirement
to provide or
produce
information
in electronic
form

24. The agency shall provide or produce information that is in electronic form by providing or producing the information—

- (a) in paper or other non-electronic form; but, if the maintenance of the integrity of the information cannot be assured, the person who must provide or produce the information must—
 - (i) notify every person to whom the information is required to be provided or produced of that fact; and
 - (ii) if requested to do so, provide or produce the information in electronic form in accordance with paragraph (b); or
- (b) in electronic form, whether by means of an electronic communication or otherwise, if—
 - (i) the form and means of the provision or production of the information reliably assures the maintenance of the integrity of the information, given the purpose for which, and the circumstances in which, the information is required to be provided or produced;

- (ii) the information is readily accessible so as to be usable for subsequent reference; and
- (iii) the person to whom the 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.

PART IV—GENERAL PROVISIONS

Copyright

25. The copyright in a work is not infringed by any of the following acts if they are carried out for the purposes of meeting a legal requirement under this Act by electronic means—

- (a) the generation of an electronic form of a document; and
- (b) the production of information by means of an electronic communication.

Security of the system

26. (1) The Agency shall be responsible for—

- (a) the security of data in the system;
- (b) ensuring that information is confidential and is used only for the purpose for which it is intended;
- (c) taking precautions to ensure that electronic systems are secure from unauthorized access;
- (d) requiring system users to comply with all applicable policies, laws and regulations governing data protection.

(2) Whenever there is any interruption in the method of payment, the Agency shall immediately notify the users and end users and provide an alternative mode of payment.

Limitation of liability

27. The Agency shall not be liable for any loss arising from a technical malfunction of the system or act or default done or omitted to be done in good faith in the course of exercising the powers conferred by this Act.

Consequential amendments

28. The laws set out in the first column of the Schedule are amended, in relation to the provisions specified in the second column of that Schedule, in the manner specified in the third column of the Schedule.

Regulations

29. (1) The Cabinet Secretary, in consultation with the Agency and other relevant institutions, may make regulations for the purpose of giving effect to the provisions of this Act.

- (2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may, in consultation with the Agency and other relevant institutions, prescribe—
- (a) administrative measures relating to the use system;
 - (b) for the integration of paperless customs with other regulatory bodies issuing trade, import, export and transit-related permits and certificates;
 - (c) extension of the national single window system to serve entire trade and logistics communities within the airports, seaports and dry ports;
 - (d) for creation of an integrated national logistics platform interlinking the customs administrator, trading companies and the service sectors to better manage the entire chain of import-export operations;
 - (e) for the interconnection and integration of national single windows into a bi-lateral or regional cross-border e-information exchange platform;
 - (f) timelines for processing applications under this Act;
 - (g) fees and levies chargeable under this Act;
 - (h) the conditions that must be complied with by users of the system.

SCHEDULE OF AMENDED LAWS			Section 28
Statute	Section	Amendment	
1. Agriculture and Food Authority Act No. 13 of 2013	4	By inserting the following paragraph immediately after paragraph (e)— (ea) pursuant to the provisions of this Act and any other law, authorize by electronic means, the export or import of designated produce or crop products.	
2. Kenya Ports Authority Act, Cap 391	38	By deleting the word “an authorised employee” appearing immediately after the word “to produce” and substituting therefor the phrase— “the national single window system or an agency authorized by it”	
3. Pest Control Products Act, Cap 346	6	By inserting the following paragraph immediately after paragraph (d)— “(e) to facilitate collaboration with other government agencies, in matters relating to this Act, to promote international trade under the national single window system”	
4. The Energy Act, Cap 314	30	In subsection (1) by inserting the following paragraph immediately after paragraph (j)— “(ja) the requirements under the national single window system”	
5. Export Processing Zones Act, No. 12 of 1990	9	By inserting the following paragraph immediately after paragraph (b)— “(ba) the facilitation and collaboration with other government agencies to promote international trade under the national single window system”	
	20	By deleting sub section (1) and substituting therefor the following— (1) The Authority shall, subject to the requirements of the national single window system, keep and maintain an electronic register of licenses issued under this Act indicating the particulars prescribed.	

6. Kenya Maritime Authority Act, Cap 370 5 By inserting the following paragraph immediately after paragraph (c)—
“(ca) liaise with the national single window system to implement digital and electronic platforms and facilitate collaboration with other agencies to promote international trade”
7. Merchant Shipping Act, Cap 389 By inserting the following subsection immediately after subsection (7)—
“(7A) The Register shall be automated for purposes of providing collaboration with other agencies and enabling linkage to the national single window system”
8. Crops Act, No. 16 of 2013 16 By inserting the following subsection immediately after subsection (3)—
“(3A) There shall be kept and maintained an automated Register of persons registered under this section for purposes of sharing information under the national single window system and other agency.
9. Pharmacy and Poisons Act, Cap 244 6 By inserting the following subsection immediately after subsection (2)—
“(2A) The Register kept under this section shall be automated for purposes of sharing information under the national single window system and other agency.
10. Radiation Protection Act, Cap 243 11 By inserting the following new subsection immediately after subsection (4)—
“(4A) There shall be kept an automated register of licenses issued under this section for purposes of sharing information under the national single window system and other agency”
11. Alcoholic Drinks Control Act, No 4 of 2010 9 By inserting the following new subsection immediately after subsection (16)—
“(17) A licence under this section shall be applied for and issued electronically”
12. Environmental Management 83 (a) By renumbering the existing provision as subsection (1);
(b) By inserting the following new subsection (2)—

nt and Co-ordination Act, No. 8 of 1999	13. Public Achieves and Documenta tion Service Act, Cap 19	9	<p>“(2) To facilitate collaboration with the national single window system and any other agency, the Authority may allow for electronic application and issuance of licenses required under this Act.</p> <p>By inserting the following new subsection immediately after subsection (3)—</p> <p>“(3A) A licence under this section shall be applied for and issued electronically”.</p>
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MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide a framework for the facilitation of trade and commerce using the National Electronic Single Window System. It does this by establishing the National Electronic Single Window System and prescribing a framework for its operations.

The structure of the Bill is as follows:

Part I (Clauses 1-3) provides for preliminary matters including the short title, interpretation of terms and objects of the law. Among the stated objects of the proposed Act is to establish a legal framework for a national single widow system to facilitate single submission of trade data and information, promote coordination and partnership among the players and facilitate electronic transactions in cross border trade and remove legal and operational barriers to electronic transactions.

Part II (Clauses 4-9) provides for the establishment and administration of the national electronic single window system to be known as the Kenya TradeNet. The system is intended to serve as the single entry point for persons involved in international trade for purposes of lodging import and export documents electronically and making electronic payment of fees, levies, duties and other taxes due to the government. This Part also provides the system shall be administered by the Kenya Trade Network Agency established under the Legal Notice number 6 of 2011. It provides for additional mandate of the Agency relating to registration of users, maintenance and upgrade, processing of documentation and coordinating with the relevant government agencies and industry players. Further, this Part makes it a requirement for the system to employ internationally accepted standards and procedures in order to conform to the basic principles of a workable single window system. It provides for the power of the agency to levy fees and collect taxes, the modes of making those payments electronically and makes a provision for regional cooperation in stabliling a regional single window system.

Part III (Clauses 10-24) makes provisions aimed at improving certainty in relation to electronic information and electronic communication. It provides that the provisions of the Kenya Information and Communication Act relating to electronic transactions shall apply international trade and that Agency shall be the responsible for oversight over such transactions. This Part also makes provisions relating to legal effect of electronic records, dispatch and receipt of electronic documents and existing legal requirements in relation to documents as they relate to electronic documents under this Act.

Part IV (Clauses 25-28) contains general provisions including content requirements, copy right issues, security of the system, limitation of liability and the power by the Cabinet Secretary to make regulations.

This Bill delegates legislative powers to the Cabinet Secretary.

This is a not a Bill concerning county governments within the meaning of Article 110 of the Constitution and is an ordinary Bill.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for in the annual estimates.

Dated.....2016

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*Leader of Majority Party/or
Chairperson of the relevant National Assembly Committee*