

THE REPUBLIC OF KENYA

LAWS OF KENYA

THE NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM ACT

CAP. 485D

Revised and published by the National Council for Law Reporting
with the authority of the Attorney-General as gazetted by the Government Printer

www.kenyalaw.org

Kenya

National Electronic Single Window System Act

Cap. 485D

Legislation as at 27 December 2024

By Kenya Law and Laws.Africa. Share widely and freely.

www.kenyalaw.org | info@kenyalaw.org

FRBR URI: /akn/ke/act/2022/25/eng@2024-12-27

There is no copyright on the legislative content of this document.

This PDF copy is licensed under a Creative Commons Attribution NonCommercial ShareAlike 4.0 License (CC BY-NC-SA 4.0). This license enables reusers to distribute, remix, adapt, and build upon the material in any medium or format for noncommercial purposes only, and only so long as attribution is given to the creator. If you remix, adapt, or build upon the material, you must license the modified material under identical terms. CC BY-NC-SA includes the following elements:

- BY: credit must be given to the creator.
- NC: Only noncommercial uses of the work are permitted.
- SA: Adaptations must be shared under the same terms.

Share widely and freely.

National Electronic Single Window System Act (Cap. 485D)
Contents

Part I – PRELIMINARY 1
1. Short title 1
2. Interpretation 1
3. Objective of the Act 2
4. Application of the Act 2
5. Guiding principles 2
Part II – THE ESTABLISHMENT AND ADMINISTRATION OF THE NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM 3
6. The establishment of the National Electronic Single Window System 3
7. Objectives of the System 3
8. Administration of the System 3
9. Other agencies to co-operate with the Agency 3
10. Technical aspects of System 4
11. Fees 4
12. Registration of users 4
13. Co-operation with other institutions or agencies 5
Part III – IMPROVING CERTAINTY IN RELATION TO ELECTRONIC INFORMATION AND ELECTRONIC COMMUNICATION IN THE SYSTEM 5
14. Agency to be responsible for electronic transactions relating to trade 5
15. Legal effect of electronic records 5
16. Electronic submission of documents and access to information 5
17. Notarisation, acknowledgement and certification 6
18. Multiple copies and Seal requirements 6
19. Time of dispatch 6
20. Time of receipt 6
21. Integrity of information to be maintained 6
22. Delivery of data message 7
23. Requirements relating to retention of information 7
24. Requirement to provide or produce information in electronic form 8
25. Requirement to provide or to produce information in paper form 8
Part IV – ESTABLISHMENT AND FUNCTIONS OF THE KENYA TRADE NETWORK AGENCY 8
26. Establishment of the Agency 8
27. Functions of the Agency 9
28. Board of Directors 9

29. Vacancy of office 10
30. Powers of the Board 10
31. Delegation by the Board 10
32. Chief Executive Officer 10
33. Staff of the Agency 10
Part V – FINANCIAL PROVISIONS 11
34. Funds of the Agency 11
35. Financial Year 11
36. Annual budget estimates 11
37. Accounts and Audit 11
Part VI – GENERAL PROVISIONS 12
38. Copyright 12
39. Security of the System 12
40. Limitation of liability in relation to the System 12
41. General penalty 12
42. Sanctions 13
43. Regulations 13
44. [Spent] 14
45. Transition 14
46. [Spent] 14
SCHEDULE 14

NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM ACT

CAP. 485D

Published in Kenya Gazette Vol. CXXIV—No. 141 on 22 July 2022

Assented to on 21 June 2022

Commenced on 11 July 2022

[Revised by 24th Annual Supplement (Legal Notice 221 of 2023) on 31 December 2022]
[Amended by Business Laws (Amendment) Act, 2024 (Act No. 20 of 2024) on 27 December 2024]

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 for connected purposes

Part I – PRELIMINARY

1. Short title

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

2. Interpretation

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 section 2 of the Kenya Information and Communications Act (Cap. 411A);

"Agency" means the Kenya Trade Network Agency established under section 26;

"authorised person" means a person authorised by the Agency as a user of the System;

"Board" means the Board of Directors of the Agency established under section 28;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to finance;

"computer" has the meaning assigned to it under section 2 of the Kenya Information and Communications Act (Cap. 411A);

"customs" has the meaning assigned to it under section 2(1) of the East African Community Customs Management Act, 2004 (No. 1 of 2005);

"data" has the meaning assigned to it under section 2 of the Kenya Information and Communications Act (Cap. 411A);

"data message" means data message generated, sent, received or stored by computer 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 data or the transfer of such data, but does not include disclosure made directly by a user to an employee or agent for the purposes of enabling the employee or agent to carry out the employee's or agent's duties;

"electronic form" has the meaning assigned to it under section 2 of the Kenya Information and Communications Act (Cap. 411A);

"electronic record" has the meaning assigned to it under section 2 of the Kenya Information and Communications Act (Cap. 411A);

"electronic signature" has the meaning assigned to it under section 2 of the Kenya Information and Communications Act (Cap. 411A);

"electronic communication" means communication by means of data messages;

"electronic records system" includes a 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 or the sale or purchase of goods or services between businesses, households, individuals, governments or public or private organizations, conducted over computer-mediated networks;

"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 an agent or not, sends, receives or stores a particular data message or provides other services with regard to that message;

"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;

"services" include any facility and value-addition products offered by the Agency or any user of the System for facilitating trade;

"System" means the National Electronic Single Window System established under section 6;

"service level agreement" means any contract entered into between the Agency and a user of the System that defines the level of service that the user of the System is expected to provide;

"Shippers Council of East Africa" means the Shippers Council of East Africa registered under the Societies Act (Cap. 108);

"trade" means domestic, cross-border and international trade on goods either through exchange in airports, seaport, dry ports or imports or exports on exports on transit.

3. Objective of the Act

The objective of the Act is to provide a single platform for facilitation of trade through integration of systems of Government and private entities.

4. Application of the Act

The Act shall apply to Government entities, persons importing or exporting goods and to persons involved in domestic trade.

5. Guiding principles

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

(a) simplicity and practicability;

(b) cost effectiveness;

(c) non-discrimination;

(d) consistency and predictability;

(e) modernization and use of new technology; and

(f) due process and cooperation.

Part II – THE ESTABLISHMENT AND ADMINISTRATION OF THE NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM

6. The establishment of the National Electronic Single Window System

(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—

(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.

7. Objectives of the System

The main objectives of the System shall be—

(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 facilitate electronic transactions in trade and reduce legal and operational barriers to electronic transactions; and

(d) to facilitate co-ordination and partnership among the department responsible for customs, other relevant Government ministries, Government entities or agencies and industry players dealing with trade or trade facilitation.

8. Administration of the System

(1) The System shall be administered by the Agency.

(2) The Agency shall maintain the integrity and security System.

9. Other agencies to co-operate with the Agency

Government entities shall co-operate with the other agencies to Agency in-

(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.

10. Technical aspects of System

(1) The Agency shall adopt relevant internationally accepted standards, procedures, documents, technical details and formalities for the effective implementation of the System.

(2) The processes and technical aspects of the System shall be guided by the following principles—

(a) transparency in relation to procedures being undertaken through the System;

(b) security of trade data;

(c) simplicity and accessibility;

(d) confidentiality and privacy;

(e) reliability and consistency;

(f) scalability and interoperability; and

(g) efficiency.

11. Fees

(1) The Agency may—

(a) levy nominal fees for its services as may be prescribed in Regulations; and

(b) facilitate, through the System, the collection of any other dues as agreed upon by relevant Government ministries, departments or agencies as provided for under any written law.

(2) The Cabinet Secretary may make Regulations for the better carrying into effect of the provisions of this section, including provisions on—

(a) prescribed fees payable to the Agency for its services;

(b) reduction of fees or exemption from payment of fees; and

(c) conditions for reduction of fees or exemption from payment of fees.

[Act No. 20 of 2024, s. 35.]

12. Registration of users

(1) A person who is required to use the System shall apply to the Agency to be registered as a user of the System.

(2) An application under subsection (1) shall be in the prescribed form.

(3) The Agency shall—

(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;

(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; or

(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.

13. Co-operation with other institutions or agencies

The Agency shall, for the purposes of establishing co-operation with a regional or international electronic single window system—

(a) be the national lead agency; and

(b) collaborate with regional and international institutions or agencies.

Part III – IMPROVING CERTAINTY IN RELATION TO ELECTRONIC INFORMATION AND ELECTRONIC COMMUNICATION IN THE SYSTEM

14. Agency to be responsible for electronic transactions relating to trade

(1) The provisions of Part VIA of the Kenya Information and Communications Act (Cap. 411A), or any other law relating to electronic transactions and cyber security shall apply to the System.

(2) The Agency shall, in relation to electronic transactions conducted under the System, have and exercise the powers to—

(a) facilitate electronic transactions by use of reliable electronic records; and

(b) promote public confidence in the integrity and reliability of electronic records in the system.

15. Legal effect of electronic records

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.

16. Electronic submission of documents and access to information

(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—

(a) produced, recorded, 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 may provide information in the System for use by an authorised person.

(3) 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;

(e) deregister users; and

(f) handle any other matter that is relevant to the objects of the Act.

(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 compiled during the generation of information from the System.

17. Notarisation, acknowledgement and certification

(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 by a secure electronic signature of a person authorised by law to sign or notarise the document 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 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.

(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 the electronic signature of a person who is authorised to certify the document which is verified in advance in the System.

18. Multiple copies and Seal requirements

(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.

(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.

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

19. Time of dispatch

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.

20. Time of receipt

An electronic communication in the System shall be deemed to have been 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.

21. Integrity of information to be maintained

(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.

(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.

22. Delivery of data message

(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.

(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-

(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—

(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.

(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—

(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.

(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.

23. Requirements relating to retention of information

In addition to the requirements prescribed under section 83I of the Kenya Information and Communication where a person is required to retain information that is information, contained in the System, that person shall—

(a) also retain such information he or she has obtained that may enable the identification of—

(i) the origin of electronic communication;

(ii) the destination of the electronic communication; and

(iii) the time when the electronic communication was sent and when it was received;

(b) ensure that the information referred to in paragraph(a), is readily accessible for subsequent reference.

24. Requirement to provide or produce information in electronic form

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 ensures the maintenance of the integrity of the information, and the information is readily accessible for subsequent reference; and

(b) the person to whom the information is required to be provided or produced consents to the National Electronic Single Window System information being provided or produced in an electronic form and, where applicable, by means of an electronic communication.

25. Requirement to provide or to produce information in paper form

The Agency shall when required, provide or produce information that is in electronic form—

(a) in 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—

(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 the provisions of paragraph (b).

(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 assures the maintenance of the integrity of the information;

(ii) the information is readily accessible for subsequent reference; and

(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.

Part IV – ESTABLISHMENT AND FUNCTIONS OF THE KENYA TRADE NETWORK AGENCY

26. Establishment of the Agency

(1) There is hereby established an agency known as the Kenya Trade Network Agency.

(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) purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

(c) borrowing and making investments; and

(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.

(3) The headquarters of the Agency shall be in Nairobi.

27. Functions of the Agency

The functions of the Agency shall be to—

(a) establish and manage the System and to facilitate trade;

(b) implement policies relating to the System;

(c) integrate electronic systems of public and private entities involved in receipting, processing and approving documents relating to international trade transactions;

(d) provide an electronic platform for issuance of permits or approvals through the system;

(e) develop, manage, and promote interchange of electronic data for facilitation of trade;

(f) undertake and co-ordinate research and surveys in electronic commerce aimed at simplifying and harmonizing trade documentation;

(g) 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;

(h) collect and provide trade statistics;

(i) plan, develop, monitor and evaluate training programmes for all stakeholders to conformity with international best practices; and

(j) 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.

28. Board of Directors

(1) There shall be a Board of Directors of the Agency, competitively recruited and which shall consist of —

(a) a non-executive chairperson appointed by the President;

(b) the Chief Executive Officer of the Agency appointed under section 32;

(c) the Principal Secretary in the Ministry for the time being responsible for matters relating to finance or his or her representative;

(d) the Principal Secretary in the Ministry for the time being responsible for matters relating to trade or his or her representative;

(e) the Principal Secretary in the Ministry for the time being responsible for matters relating to transport or his or her representative;

(f) a representative from the Shippers Council of East Africa; and

(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—

(i) trade logistics;

(ii) information communication technology; or

(iii) finance or administration.

(2) The chairperson and members of the Board appointed 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.

29. Vacancy of office

A member of the Board other than an *ex officio* member shall cease to hold office if the member—

(a) resigns in writing to the Cabinet Secretary;

(b) dies; or

(c) is otherwise removed from office.

30. Powers of the Board

(1) The Board shall be responsible for the administration, management and development of the Agency.

(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 to—

(a) administer the assets and funds of the Agency in such manner and for such purposes as shall promote the best interests of the Agency;

(b) receive grants, donations or other moneys on behalf of the Agency;

(c) enter into association with such other institutions, persons, bodies or organizations within or outside Kenya as the Board may consider desirable appropriate in furtherance of the purposes for which the Agency is established;

(d) 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

(e) formulate and approve the strategies and plans for the Agency.

31. Delegation by the Board

The Board may, by resolution either generally 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 as authorized by this Act to exercise or perform.

32. Chief Executive Officer

(1) 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.

(2) A person shall qualify for appointment as a Chief Executive Officer if that person—

(a) is a holder of a relevant post graduate degree from a university recognised in Kenya; and

(b) has at least ten years working experience at a senior management level.

(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.

33. Staff of the Agency

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 conditions as the Cabinet Secretary may, in consultation with the Board, determine.

Part V – FINANCIAL PROVISIONS

34. Funds of the Agency

The funds of the Agency shall consist of—

(a) such moneys as may be appropriated by Parliament;

(b) moneys that may accrue or vest in the Agency in the course of the performance of its functions under this Act; and

(c) such grants, fees and other donations as may be made to the Agency.

35. Financial Year

The financial year of the Agency shall be the period of twelve months ending on the thirtieth of June each year.

36. Annual budget estimates

(1) The Board shall, in accordance with the Public Finance Management Act (Cap. 412A) cause to be prepared budget estimates of the Agency for that financial year.

(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—

(a) payment of retention, allowances and other charges in respect of the Board members and the staff of the Agency;

(b) payment of salaries, pensions, gratuities and other charges in respect of retirement benefits to the staff of the Agency; and

(c) proper maintenance, repair, and replacement of the equipment and other movable property of the Agency.

(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.

(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.

37. Accounts and Audit

(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.

(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.

(3) The accounts of the Agency shall be audited and reported upon in accordance with the provisions of the Public Audit Act (Cap. 412B).

Part VI – GENERAL PROVISIONS

38. Copyright

The copyright in a work shall be deemed not to have been infringed by any of the following acts if they carried out for the purposes of meeting a requirement under this Act—

(a) the reproduction of a document from the System; and

(b) the production of information by means of an electronic communication.

39. Security of the System

(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 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.

(2) Where there is an interruption in a method of payment relating to a transaction undertaken in the System, the Agency shall—

(a) notify the users of any foreseeable and unforeseen service interruption within prescribed timelines; and

(b) provide an alternative method of payment.

40. Limitation of liability in relation to the System

(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.

(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.

(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.

41. General penalty

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.

42. Sanctions

(1) Despite the provisions of section 41 the Agency may sanction a person who contravenes any provision of this Act.

(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.

43. Regulations

(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.

(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 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;

(k) the process of accessing the information from the System; and

(l) any other matter required in order to achieve the objectives of the Act.

(3) For the purpose of Article 94(6) of the Constitution-

(a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary make rules to provide for the better carrying into effect the provisions of this Act;

(b) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;

(c) the principles and standards applicable to the rules made under this section are those set out in the Interpretation and General Provisions Act (Cap. 2) and the Statutory Instruments Act (Cap. 2A).

44. [Spent]

45. Transition

(1) All rights, obligations and contracts which, immediately before coming into operation of this Act, were vested in or imposed on the former Board shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Board.

(2) Upon the commencement of this Act, any member of the former Board shall be deemed to be a member of the reconstituted Board for the unexpired period of his or her term of service.

(3) Every person who immediately before the commencement of this Act was an officer or member of staff of the former Board shall be an officer or member of staff of the Board.

(4) The Chief Executive Officer of the former Board shall be the Chief Executive Officer of the Board and shall serve for his or her unexpired term.

(5) In this section, "former Board" means the Board of the Kenya Trade Network Agency established under the Kenya Trade Network Agency Order, 2010 (now revoked).

46. [Spent]

SCHEDULE

CONSEQUENTIAL AMENDMENTS

Spent