
ONE-STOP BORDER CONTROL BILL, 2022

MEMORANDUM

This Bill seeks to provide for a legal framework for implementation of agreements signed between the Republic of Malaŵi and neighbouring countries for operationalization of one-stop border posts to facilitate coordinated border controls for efficient cross-border movement of people and clearance of goods. The legislation will enable Malaŵi to comply with its obligations under the SADC Protocol on Trade, COMESA Treaty and other regional and international trade facilitation agreements.

The Bill provides for the establishment of one-stop border posts between Malaŵi and neighbouring countries. One-stop border posts reduce the number of stops in cross-border trade and other transactions by combining and locating, at a single location, border control activities between the Republic of Malaŵi and a neighbouring country.

To enable effective implementation of the one-stop border post concept, the Bill provides for—

(a) extra-territorial application of national laws relating to border controls of the Republic of Malaŵi and neighbouring countries thereby enabling the hosting of, and performance of statutory functions by, border control officers outside their national territory;

(b) sharing of each other's existing border control infrastructure and facilities with a view to simplifying and expediting border control procedures; and

(c) harmonization of border control regulations and procedures to ensure uniformity and predictability.

ONE-STOP BORDER CONTROL BILL, 2022

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A BILL

entitled

An Act to provide for implementation of one-stop border post agreements between the Republic of Malaŵi and adjoining States; authorize extra-territorial application of the laws of Malaŵi and neighbouring States in one border posts; establish control zones and provide for powers of officers in the control zones; and provide for matters incidental thereto

ENACTED by the Parliament of Malaŵi as follows—

PART I—PRELIMINARY

Short title
and
commence-
ment

1. This Act may be cited as One-Stop Border Control Act, 2022 and shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

“adjoining State” means a State that shares a common border with the Republic of Malaŵi;

“border controls” means any border related control measure, check or authorization and includes powers of arrest, search, seizure and detention of persons and goods;

“control zone” means a part of the territory of the Republic of Malaŵi or an adjoining State within which officers of both States are empowered to conduct border controls under this Act;

“exclusive use area” means an area of the control zone dedicated to the exclusive use of the Republic of Malaŵi or an adjoining State in a one-stop border post;

“facilitation agent” means a person other than an officer, providing services for the completion of border controls by passengers or freight in accordance with the laws of the Republic of Malaŵi and an adjoining State;

“officer” means a person responsible for exercising border controls in accordance with the laws of the Republic of Malaŵi or an adjoining State;

“one-stop border post agreement” means an agreement relating to the establishment of a one-stop border post entered into by the Republic of Malaŵi and an adjoining State in accordance with section 3; and

“one-stop border post” means a border post established under a one-stop border post agreement between the Republic of Malaŵi and an adjoining State.

3.—(1) The Republic of Malaŵi may enter into a one-stop border post agreement, with an adjoining State to facilitate trade.

One-stop border post agreements

(2) A one-stop border post agreement shall provide for—

(a) the undertaking of border controls on behalf of the Republic of Malaŵi and the adjoining State at a place located—

(i) in the territory of the Republic of Malaŵi; and

(ii) within the territory of the adjoining State; and

(b) the exercise of border controls by officers from the Republic of Malaŵi and the adjoining State, in accordance with the relevant legislation of Malaŵi and the adjoining State.

PART II—CONTROL ZONES AND FACILITIES IN CONTROL ZONES

4.—(1) The Minister may, after consulting appropriate authorities in Malaŵi and in collaboration with an adjoining State with which the Republic of Malaŵi has entered into a one-stop border post agreement, establish and designate a control zone at a common port of entry for the implementation of one-stop border controls.

Establishment and designation of control zones

(2) A control zone may be wholly or partially located in the Republic of Malaŵi or an adjoining State or be in such other mutually agreed geographical location as specified in the one-stop border post agreement between the Republic of Malaŵi and the adjoining State.

(3) A control zone shall be arranged such that for each direction of travel, border controls are carried out at the port of entry or, depending on the configuration, from a single stop location.

5.—(1) The Minister may, pursuant to a one-stop border post agreement with an adjoining State, assign a portion of a control zone established in the territory of Republic of Malaŵi to the adjoining State, for the exclusive use of the adjoining State.

Exclusive use areas

(2) Officers of the adjoining State shall have control over entry into, and exit from, the exclusive use area and may, where

necessary, request for assistance from competent authorities of the Republic of Malaŵi.

(3) A law enforcement officer of the Republic of Malaŵi shall not enter the exclusive use area of an adjoining State except at the request or with the permission of officers of the adjoining State.

Equipment
for
official use

6. Subject to declarations being made and appropriate inventories being kept, all equipment which is necessary to enable—

(a) officers of the adjoining State to carry out official functions in a control zone in the Republic of Malaŵi; or

(b) officers of the Republic of Malaŵi to carry out official functions in a control zone in the adjoining State,

shall be freely transferable within the control zone and not be regarded as imports or exports on entry or exit.

Communication
equipment in
control zones

7. The Republic of Malaŵi and the adjoining State shall install such communication equipment and facilities as are necessary to facilitate effective communication in the performance of official duties in a control zone.

Free movement
of officers in
control zones

8.—(1) Officers of the adjoining State shall, for official purposes, move freely within a control zone in the Republic of Malaŵi and enter and exit the control zone without being required to produce a passport or a visa.

(2) Officers of the adjoining State may pass through Malaŵi border controls on production of appropriate identification documentation.

Identification
of officers

9.—(1) An officer shall, while performing duties in a control zone, wear the official uniform and distinctive insignia of the respective appropriate authority and visibly display officially issued identification card.

(2) Where an officer is not required to wear uniform, by virtue of the officer's work, such officer shall display the officially issued identification card.

Carrying of
firearms by
officers

10. An officer of an adjoining State shall not carry a firearm in a control zone except by special agreement between the Republic of Malaŵi and the adjoining State.

Access to
control zones
by facilitation
agents

11. A facilitation agent of an adjoining State—

(a) shall have reasonable access to a control zone in the Republic of Malaŵi for official purposes;

(b) shall not be required to produce a passport or visa;

(c) shall use identity and status cards issued for that purpose, by the adjoining State;

(d) shall provide services in accordance with the border control laws of the adjoining State; and

(e) may communicate with that agent’s offices outside the control zone and establish such communication as may be required for that purpose.

PART III—CONDUCT OF BOARDER CONTROLS

12. An officer of an adjoining State may conduct border controls in a control zone located in the Republic of Malaŵi in accordance with the laws of the adjoining State.

Border controls by officers of adjoining State

13.—(1) The exit formalities of the State of departure shall be carried out before the entry formalities of the State of arrival.

Sequence of controls

(2) For purposes of entry into or exit from the Republic of Malaŵi, the relevant laws of the Republic of Malaŵi shall apply.

14. Subject to agreement with an adjoining State, officers of the Republic of Malaŵi may conduct joint border controls with officers of the adjoining State.

Joint controls

15. Where an adjoining State refuses to admit any person, vehicle, animal, merchandise or other goods from the Republic of Malaŵi, the authorities in the Republic of Malaŵi shall admit back into Malaŵi such person, vehicle, animal, merchandise or other goods.

Obligation to re-admit persons, vehicles, etc

PART IV—APPLICATION OF BORDER CONTROL LAWS

16.—(1) The applicable laws of the Republic of Malaŵi and of an adjoining State shall apply in a control zone for the purpose of enabling officers of the Republic of Malaŵi and the adjoining State to carry out border controls at a one-stop border post.

Laws of Malaŵi and adjoining States to apply in control zones

(2) A breach of the laws relating to border controls of an adjoining State detected in a control zone located in the Republic of Malaŵi shall be subject to the laws of the adjoining State as if the breach had occurred in the adjoining State.

(3) For purposes of this section “applicable laws”, in relation to—

(a) the Republic of Malaŵi, means the laws listed in the Schedule; and

(b) an adjoining State, means the laws of the adjoining State listed in the one-stop border post agreement or any law of the adjoining State which corresponds to this Act.

(4) Where the laws prescribed under subsection (3) are inconsistent with this Act, the provisions of this Act shall prevail to the extent of the inconsistency.

(5) The Minister may, by notice published in the *Gazette*, amend the Schedule.

(6) The Minister shall notify an adjoining State of any changes made to the Schedule.

Responsibility
of Malaŵi
Police in
control
zones in
Malaŵi

17. The Malaŵi police shall be responsible for maintaining peace, security, law and order and dealing with non-border control related criminal offences in a control zone located in the Republic of Malaŵi.

PART V—MISCELLANEOUS

Temporary
measures

18.—(1) This Act shall not affect the rights of the Republic of Malaŵi or an adjoining State to take temporary measures that may affect the operation of a control zone in the interest of defence and security, public safety, public order, economic interest, public health, public morality and any other circumstances of similar nature.

(2) Where the Republic of Malaŵi intends to take measures referred to under subsection (1), the Minister shall, notify the adjoining State through the appropriate diplomatic channels.

(3) Temporary measures taken under subsection (1) may include the—

(a) reversal of sequence or location of controls; and

(b) temporary closure of a border post within the territory of the adjoining State.

Regulations

19. The Minister may, by notice published in the *Gazette*, make regulations as are necessary or expedient for the purpose of giving full effect to this Act and prescribing all matters which are necessary or convenient to be prescribed.

Transition
provision

20. A one-stop border post agreement entered into before the commencement of this Act shall be deemed to have been entered into under this Act and shall be implemented in accordance with this Act.

SCHEDULE

s. 16

LIST OF APPLICABLE LAWS

Control and Diseases of Animals Act (Cap. 66:02)
Control of Goods Act (No. 15 of 2018)
Corrupt Practices Act (Cap. 7:04)
Customs and Excise Act (Cap. 42:01)
Dangerous Drugs Act (Cap. 35:02)
Electronic Transactions and Cyber Security Act (Cap. 72:02)
Exchange Control Act (Cap. 45:01)
Fisheries Conservation and Management Act (Cap. 66:05)
Forestry Act (Cap. 63:01)
Hide and Skin Trade Act (Cap. 50:02)
Immigration Act (Cap. 15:03)
Iodization of Salt Act (Cap. 52:02)
Malaŵi Bureau of Standards Act (Cap. 51:02)
Malaŵi Police Service Act (Cap. 13:01)
Malaŵi Revenue Authority Act (Cap. 39:07)
Meat and Meat Products Act (Cap. 67:02)
Milk and Milk Products Act (Cap. 67:05)
National Parks and Wildlife Act (Cap. 66:07)
Pesticides Act (Cap. 35:03)
Pharmacy and Medicines Regulatory Authority Act (No. 9 of 2019)
Plant Protection Act (Cap. 64:01)
Public Health Act (Cap. 34:01)
Road Traffic Act (Cap. 69:01)
Taxation Act (Cap. 41:01)
Value Added Tax Act (Cap. 42:02)
Metrology Act (No. 10 of 2016)
Penal Code (Cap. 7:01)
Environmental Management Act (No. 19 of 2017)
Trafficking in Persons Act (Cap. 7:06)
Tax Administration Act (No.13 of 2021)

OBJECTS AND REASONS

This Bill seeks to provide for a legal framework for implementation of one-stop border post agreements signed between the Republic of Malaŵi and neighbouring countries to facilitate coordinated border control for the efficient cross-border movement of people and clearance of goods.

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