



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$6.00

WINDHOEK - 28 September 2017

No. 6423

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GOVERNMENT NOTICE

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 248

2017

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 8 of 2017: One-Stop Border Posts Control Act, 2017.

Act No. 8, 2017

ONE-STOP BORDER POSTS CONTROL ACT, 2017**ACT**

To provide for the conclusion of agreements with adjoining States on the establishment and implementation of one-stop border posts; and to provide for incidental matters.

(Signed by the President on 7 September 2017)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

Definitions

1. In this Act, unless the context indicates otherwise -

“adjoining state” means a neighbouring state, including the agency of the state, with whom an agreement has been entered into;

“agreement” means an agreement concluded in terms of section 3;

“border controls” means any border related control measures, checks and authorisations, and other related measures provided for in the national laws and regulations of the parties;

“clearing agent” means any person registered in terms of section 73 of the Customs and Excise Act, 1998 (Act No. 20 of 1998), and includes a forwarding agent;

“control zone” means a zone established under section 3;

“exclusive use area” means an area in the control zone dedicated for the exclusive use of one of the parties;

“Minister” means the Minister responsible for customs and excise;

“official” means an authorised person responsible for exercising border controls on behalf of a party, and includes a police officer;

“one-stop border post” means a type of port of entry established under section 3;

“party” means a party to an agreement; and

“port of entry” means a port of entry as defined in section 1 of the Immigration Control Act, 1993 (Act No. 7 of 1993).

Application of Act

2. This Act applies extra-territorially within the confines of a control zone that Namibia shares with the adjoining state concerned.

Establishment of control zones and one-stop border posts

3. (1) Subject to Article 32(3)(e) of the Namibian Constitution, the Minister may conclude an agreement with an adjoining state -

Act No. 8, 2017 ONE-STOP BORDER POSTS CONTROL ACT, 2017

- (a) establishing a control zone in the territory of -
 - (i) one of the parties; or
 - (ii) both parties;
- (b) establishing a one-stop border post, to be jointly managed by both parties, at any port of entry within a control zone in the territory of -
 - (i) one of the parties; or
 - (ii) both parties; and
- (c) permitting officials of the parties to exercise -
 - (i) border controls at the border post referred to in paragraph (b); and
 - (ii) any power of arrest, search, seizure or detention of person or thing,

in accordance with the laws of Namibia and the adjoining state within the control zone.

(2) The Minister, by notice in the *Gazette*, must announce a port of entry as a one-stop border post as soon as practicable after its establishment under subsection (1)(b).

Application of border control laws

4. (1) The laws relating to border controls of -
- (a) the adjoining state apply in the control zone established in the territory of Namibia, and are effected by the officials of the adjoining state in the same way as in the territory of the adjoining state; and
 - (b) Namibia apply in the control zone established in the territory of the adjoining state, and are effected by the officials of Namibia in the same way as in the territory of Namibia.

(2) A contravention of the laws relating to border controls of the adjoining state which is detected in the control zone in the territory of Namibia is subject to the laws of the adjoining state as if the contravention had occurred in the territory of the adjoining state.

(3) A contravention of the laws relating to border controls of Namibia which is detected in the control zone in the territory of the adjoining state is subject to the laws of Namibia as if the contravention had occurred in the territory of Namibia.

(4) An official enforcing the border control laws and procedures in a control zone must do so in accordance with the border control laws of the state that he or she works for.

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ONE-STOP BORDER POSTS CONTROL ACT, 2017**Application of criminal laws**

5. (1) Subject to subsection (5), where an act or omission that constitutes a criminal offence in an adjoining state is committed in the control zone in the territory of the adjoining state -

- (a) the offender concerned is subject to the jurisdiction of the courts of the adjoining state; and
- (b) the offence is judged in terms of the criminal law of the adjoining state.

(2) Where an act or omission that constitutes a criminal offence in Namibia is committed in the control zone in the territory of Namibia -

- (a) the offender concerned is subject to the jurisdiction of the courts of Namibia; and
- (b) the offence is judged in terms of the criminal law of Namibia.

(3) Where an act or omission that constitutes a criminal offence in Namibia is committed in the exclusive use area of Namibia in the territory of the adjoining state -

- (a) the offender concerned is subject to the jurisdiction of the courts of Namibia; and
- (b) the offence is judged in terms of the criminal law of Namibia.

(4) Where an act or omission that constitutes a criminal offence in the adjoining state is committed in the exclusive use area of the adjoining state in the territory of Namibia -

- (a) the offender concerned is subject to the jurisdiction of the courts of the adjoining state; and
- (b) the offence is judged in terms of the criminal law of the adjoining state.

(5) Despite subsection (1), where an act or omission referred to in subsection (1) is also an offence in Namibia and is committed -

- (a) in the control zone in the territory of Namibia; and
- (b) by a person who is not a citizen of the adjoining state,

and the laws of the adjoining state apply to the extent that a finding of guilty of that act or omission may lead to the offender being imposed a death penalty -

- (i) the offender concerned is subject to the jurisdiction of the courts of Namibia; and
- (ii) the offence is judged in terms of the criminal law of Namibia.

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ONE-STOP BORDER POSTS CONTROL ACT, 2017**Free transfer of money or goods within control zone**

6. The goods or money moved by any official from the territory of one of the parties to the territory of another party within the control zones of the parties are not subject to the import or export, or entry or exit laws of Namibia or the adjoining state.

Obligation to re-admit

7. (1) Where -
- (a) the state of entry, be it Namibia or the adjoining state, declines to admit any person, vehicle, animal, merchandise, or other goods; or
 - (b) a person decides not -
 - (i) to pass through the border controls of the state of entry; or
 - (ii) to send or take back any vehicle, animal, merchandise or other goods under his or her control to the state of exit,

the authorities of the state of exit must accept back the person, vehicle, animal, merchandise, or other goods.

(2) Despite subsection (1), the competent authorities of the state of exit may take any measures to deal with the person referred to in that subsection in accordance -

- (a) with its national laws; and
- (b) in a manner that does not impose obligations on the state of entry.

Clearing agents

8. (1) A clearing agent of Namibia -
- (a) has access to the control zone of the adjoining state for official purposes;
 - (b) is not required to produce any travel document or visa to gain entry to the control zone of the adjoining state, but may use an identity or status card issued for that purpose by Namibia; and
 - (c) is exempted from taxes and duties on entry into or exit from the control zone of the adjoining state.
- (2) A clearing agent of an adjoining state -
- (a) has access to the control zone of Namibia for official purposes;
 - (b) is not required to produce any travel document or visa to gain entry to the control zone of Namibia, but may use an identity or status card issued for that purpose by the adjoining state; and
 - (c) is exempted from taxes and duties on entry into or exit from the control zone on Namibia.

Act No. 8, 2017**ONE-STOP BORDER POSTS CONTROL ACT, 2017****Regulations**

9. The Minister may make regulations not inconsistent with this Act and which he or she considers necessary or expedient for giving effect to the objects of this Act.

Short title

10. This Act is called the One-Stop Border Posts Control Act, 2017.
