

# Unpacking SA's new Border Management Authority Act

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Up until now, South Africa's border management, which includes the tasks of securing the country's borders and protecting its national interests, has been managed by multiple organs of state. Despite this multiparty involvement, border management has been an ongoing challenge, and has resulted in increasing levels of cross-border crime. The trade in illicit cigarettes, for example, is one of the many cross-border crimes that South Africa has had to deal with in recent years, with such trade increasing during the national lockdown. On 21 July 2020, however, and after many years of deliberation, the Border Management Authority Act 2 of 2020 came into force.



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The Act recognises the need for integrated and coordinated border management, in alignment with the South African Constitution, as well as international and domestic law. As such, the Act seeks to oversee the management of legitimate trade and secure cross-border travel, prevent illegal cross-border movement and the smuggling and trafficking of human beings, protect the country's environment and natural resources, and shield the country from harmful and infectious diseases, pests and substances. In particular, the Act aims to ensure effective and efficient border law enforcement functions at ports of entries and along the country's borders. To achieve this, the Act provides for the establishment of the Border Management Authority, the appointment and employment of border officials, and the establishment of an Inter-Ministerial Consultative Committee, Border Technical Committee and advisory committees.

Organs of state, such as the South African Revenue Service, will now be separate from the Border Management Authority. The Act does, however, require the Border Management Authority to co-operate and co-ordinate its border law enforcement functions with other organs of state, border communities and/or any other persons.

The implementation of the Act is expected to result in more efficient border management, which will benefit commercial cross-border traders. However, one of the aims of the Border Management Authority Act will be to curb the occurrence of cross-border crime, with various obligations and duties imposed on border officials to accomplish this aim. As such, it is important for cross-border transporters, importers and exporters to familiarize themselves with the Act, and be mindful of the duties, functions and powers of border officials and the circumstances in which they may search, seize, arrest and detain goods.

According to the Act, for example, a border official can:

“ with or without a warrant, within the border law enforcement area or at a port of entry: (a) enter any premises; (b) search any person, goods, premises or vehicle; (c) inspect any goods, documents, premises or vehicle; (d) seize anything found in that search or inspection that may be lawfully seized; (e) question any person about any matter related to the passage of persons, goods or vehicles through a port of entry, or across the border law enforcement area, and confirm their responses in a written declaration; and (f) arrest or detain any person reasonably suspected of contravening any provision of this Act. ”

With the African Continental Free Trade Area Agreement expected to be operational soon, boosting cross-border trade in the process, the implementation of the Act and the more efficient management of trade and movement across the country's borders is to be welcomed. However, only time will tell if the measures introduced in the Act will be effective in helping South Africa win the battle against cross-border crime.

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