



**BORDER MANAGEMENT
COMMITTEE (BMC)
INTER-AGENCY MEMORANDUM OF
UNDERSTANDING
AND TERMS OF REFERENCE (TORS) 2023**

INTER-AGENCY MEMORANDUM OF UNDERSTANDING

ON COORDINATED BORDER MANAGEMENT

PREAMBLE

Cognizant of Timor-Leste's candidacy for membership of ASEAN and WTO, and its existing international legal obligations pertaining to border management.

Seized of the need to fully operationalize international standards relating to coordinated border management to facilitate legitimate travel and trade across international borders whilst identifying and treating goods and travelers of identified higher risk;

Motivated to respect and implement the domestic legal mandates and portfolio requirements of each agency to manage the movement of goods and travelers in the most collaborative, efficient and effective manner;

Understanding that border agencies also operate within the Integrated System of National Security, and the National Maritime Authority System;

Recognizing the need to formalize operational-level leadership coordination and direction for officials across core border agencies to ensure implementation of coordinated border management objectives;

Aware of the lessons learned from the COVID-19 pandemic disaster management, animal diseases and pandemics, and the need for border agencies to respond quickly and in a coordinated manner to rapidly evolving challenges.

Desirous of refining the capability of border agencies to provide policy development advice to the Government on the basis of operational risk profiles, experiences and realities;

We, the undersigned HEREBY AGREE to establish a Border Management Committee, with Terms of Reference as annexed to this document.

This document will be officially known as the Border Management Committee Memorandum of Understanding and Terms of Reference 2023.

1 Definitions

ANATL- means the National Authority of Aviation Timor-Leste.

APORTIL – means the Timor-Leste Port Authority.

ASEAN – means the Association of South-East Asian Nations.

CA – Customs Authority

BMC – means the Border Management Committee established pursuant to this document.

Chicago Convention – means the Convention on International Civil Aviation.

Coordinated Border Management (CBM) – as defined by the WCO, refers to a coordinated approach by border control agencies, both domestic and international, in the context of seeking greater efficiencies over managing trade and travel flows, while maintaining a balance with compliance requirements.

CTP – means the Customs Trade Portal.

FAL 65 – means the Convention on Facilitation of International Maritime Traffic, 1965.

NDAF – means National Director for Administration and Finances, CA.

NDLT – means the National Directorate for Land and Transport.

OGA – means the Other Government Agencies.

TFA – means Trade Facilitation Agreement.

WCO – means the World Customs Organization.

WTO – means the World Trade Organization.

2 Legal obligations from International Agreements

Timor-Leste has made commitments to abide by the provisions of international agreements that are part of its accession to WTO, and ASEAN, of which it has recently become a candidate to become its 11th full member. These international agreements contain obligations for each government agency that participates in the movement of travelers and the goods. Key references applicable to border management are below:

a) World Trade Organization (WTO) Trade Facilitation Agreement

- (i) Article 8, “Border Agency Cooperation”, requires that a “Member” (this means all Government institutions) shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation, and*

transit of goods cooperate with one another and coordinate their activities in order to facilitate trade”.

(ii) **Article 7.4** also details the requirement that risk management to be applied to the processing and release of goods.

b) ASEAN Agreement on Customs, Chapter 5, Cooperation for Coordinated Border Management:

(i) **Article 46:** provides *“Each Member State shall strengthen the partnership of its customs authorities with the relevant agencies and competent authorities for coordinated border management, to the extent possible, and in accordance with the national laws of the Member State concerned”.*

(ii) **Article 47, Joint and Coordinated Border Control:**

(1) *Where controls other than customs controls are to be performed by competent authorities other than the customs authorities, the customs authorities shall, in close cooperation with those authorities, endeavor to have those controls performed, wherever possible, at the same time and place as customs controls, with the customs authorities having the coordinating role in achieving it.*

(2) *A Member State shall endeavor to establish joint or coordinated physical inspection between its customs authorities and relevant agencies and competent authorities with a view to expediting customs clearance and release to facilitate trade.*

The Convention on Facilitation of International Maritime Traffic, 1965 (FAL 65), has been adopted by the nearest neighbors of Timor-Leste, and many ASEAN members, and as such further frames the behaviors and expectations of key trading partners.

Standard 1.11 of FAL65 states:

1.11 Public authorities shall use risk management to enhance their border control procedures related to:

- *the release/clearance of cargo;*
- *security requirements; and*
- *their ability to target smuggling,*

thereby facilitating the legitimate circulation of persons and goods.

Timor-Leste is a signatory to the **Chicago Convention**. Annex 9, Standard 4.5 of the Chicago Convention states:

“4.5 Where the nature of a consignment could attract the attention of different public authorities, e.g. the customs, veterinary or sanitary controllers, Contracting States shall endeavor to delegate authority for release/clearance to customs or one of the other

agencies or, where that is not feasible, take all necessary steps to ensure that release/clearance is coordinated and, if possible, carried out simultaneously and with a minimum of delay.”

Other relevant standards relating to risk management and facilitation of travelers and goods, animals, plants, and products derived from them within Annex 9 are 1.2-1.3, 3.47-3.48, and 4.6.

Standards and recommendations relating to streamlined reception and domestic inter-agency sharing of advance passenger and cargo data are at FAL65, Chapter 1, Part C, and the Chicago Convention, Annex 9, Chapters 4 and 9.

3 Validity

This MoU comes into effect on the date it is signed by all parties.

4 Changes

Any changes to this MoU must be approved by the president and most of the Coordinated Border Management Committee members.

5 Terms of Reference

The Terms of Reference (TORs) of the BMC are at Annex 1 of this document, and define:

- a) the government agencies who may be represented at the Border Management Committee on a regular basis;
- b) the generic topics that may be dealt with at the Committee meetings;
- c) the conventions to be followed on suggestions and/or decisions made by Committee members;
- d) protocols for calling for and conducting meetings;
- e) the responsibilities of border agency members who participate in the BMC, as described in the TORs.

6 Application of this MoU

The provisions of this MoU and associated annexes apply to the establishment and operation of the BMC as a formal consultation mechanism between government border agencies.

7 Chair and Responsibility for Implementing this MoU

1. There shall be a permanent Chair and a rotating co-chair of the BMC, with the permanent Chair being the Commissioner of the Customs Authority.

2. The Co-Chair of the BMC shall rotate annually between the National Director of the Migration Service, and the Director-General of Cooperation and Institutional Development of the Ministry of Agriculture, Livestock, Fisheries and Forestry (MAPFF).
3. The Secretariat functions of the BMC shall rest permanently with the Customs Authority, National Directorate of Administration and Finance (NDAF).

The Chairs shall be responsible for:

- a) Inviting relevant other Government agencies (OGAs) to nominate members, call for meetings, endorse decisions, and perform other responsibilities, as described in the TORs;
- b) Delegating the organization of meetings, preparation of agendas, circulation papers, and other secretariat activities to the Secretariat;
- c) Promote good relationships with and between heads of agencies and operational units at borders, and the adoption of suggested coordinated border procedures and/or activities endorsed by the BMC;
- d) The implementation and standardized application of all the provisions agreed to by the BMC in order to implement domestic and international obligations and standards.

The BMC Co-Chairs shall be responsible for:

- a) Leading any meeting in the absence of the Chairs.
- b) Accompanying the Chairs in performing the responsibilities mentioned above (see option No.7).

The Commissioner of the Customs Authority shall make available this MoU and TORs at the Customs Trade Portal (CTP).

8 Joint Objectives

Once approved by the BMC, the members agree to ensure policies and procedures accordingly adopted are communicated to and adhered to by their staff.

Each member of the BMC will meet its own costs in respect of attending BMC meetings and in implementing its objectives and agreed on actions and joint activities.

9 Cost

The BMC activity-related costs come from the Ministry of Finance (MoF) budget when organizing BMC meetings, objective implementations and the agreed-upon joint actions activities.

10 Dispute Resolution

Where disputes arise in the interpretation of BMC decisions, these shall be addressed between officials of each affected agency in the first instance. Failing this, the heads of the relevant agencies shall intervene as necessary to find a resolution in a collaborative and collegiate manner, supported wherever necessary or requested by the Chairs of the BMC.

11 Agreement

The undersigned hereby:

- a) **Approve** the creation, by means of this Memorandum of Understanding, the ***Border Management Committee and adopt its Terms of Reference***"; contained in ANNEX 1;
- b) **Recommend** that all BMC permanent members/ representatives invited members, and occasional participants abide by this MoU and follow all its protocols;
- c) **Agree** that this MoU shall be communicated to the staff of each member, and for all relevant staff to implement, and apply all relevant parts of this MoU and any subsequent operational agreements reached by the BMC within respective Organic Laws, as described;
- d) **Agree** that this MoU will be published on the Customs Trade Portal (CTP); and
- e) **Direct** that this MoU shall come into effect on the day after the signed date below.

Signed on the 19th day of October 2023

.....

Jose António Fátima Abilio

Commissioner

Customs Authority

Timor-Leste

.....

Ervina Soares Pinto

Director-General
Cooperation and Institutional Development
Ministry of Agriculture, Livestock, Fishery and Forestry
Timor-Leste

.....

Adelaide da Rosa

Director-General
Migration Service
Timor-Leste

.....

Commissioner Henrique da Costa, MSi

General Commander
Timor-Leste National Police (PNTL)

.....

Marcelo Amaral

Director-General
Corporate Services
Ministry of Health
Timor-Leste

.....

Leonardo G. de Carvalho

National Director
External Commerce,
Ministry of Commerce and Industry
Timor-Leste

.....

Constantino Ferreira

Director-General
Transport and Telecommunications
Ministry of Transport and Communications
Timor-Leste

Border Management Committee (BMC)

ANNEX 1: DRAFT TERMS OF REFERENCE (TORs)

1. Creation and Date of Effect

The signatories to the Memorandum of Understanding on the creation of the Border Management Committee (BMC), taking into consideration the need to formalize and improve its relations and communication between Timor-Leste Government Border Agencies that participate in the import/ export of goods, including animals, plants and products derived from them and movement of travelers, hereby adopts these Terms of Reference for the BMC.

The establishment of this Committee shall become effective on the day the MoU is signed by the participating agencies.

2. Functions

- a) The Committee is primarily a mechanism that provides a two-way regular forum for BMC members to discuss and find practical solutions to strategic and operational border coordination issues that affect the Timor-Leste international trade and travel.
- b) The Committee is a non-permanent organization, as such it does not have the power to change laws.
- c) The BMC is responsible for budget execution and will present execution reports to the Ministry of Finance with the approval of BMC Chairs.
- d) The Committee can discuss, review and make recommendations on policies, procedures, joint initiatives, and the application of laws, regulations, and Administrative Instructions that may affect the goods imports, and exports, including animals, plants and products derived from them, transit of goods and movement of travelers,

3. Responsibilities

The Committee's responsibilities are:

- (a) to enhance the constructive dialogue and exchange of ideas between the border agencies, against the background of Timor-Leste's adherence to its commitment to abide by the requirements as a member of, or for accession to WTO and ASEAN, and other international instruments to which Timor-Leste is bound on issues related to:

- (i) coordination on the application of legislation,
 - (ii) development of coordinated clearance and associated procedures,
 - (iii) compliance with international agreements,
 - (iv) trade and travel facilitation,
 - (v) risk management,
 - (vi) transparency, and
 - (vii) identify and address, at a practical level, difficulties related to the goods importation, exportation including animals, plants and products derived from them, transit of goods and movement of travelers,
- (b) to raise awareness among border agencies, participating Other Government Agencies (OGAs), and the trading community regarding the activities and policies promoted by the BMC;
 - (c) to obtain the member's views on any new initiatives, procedures or legislation to be introduced by the border agencies or OGAs and to evaluate the possible impact of such initiatives on the trading community;
 - (d) to examine particular problematic situations in order to determine the current barriers and to identify optimal solutions;

4. Frequency of Meetings

The Committee will meet at least once every six weeks in Dili. Additional meetings will be scheduled at the discretion of the Chair. These meetings may be either in-person or virtual.

5. Membership and Protocols

Membership

- 5.1. The Committee is jointly chaired by the permanent Chair and the current rotating Chair.
- 5.2. Membership is at the Chair's discretion and will be extended to one (1) Director-General or equivalent, and two(2) standing staff members.
- 5.3. Membership to the Committee will be for a period of one (1) year, counted from the date the Chair appoints a member.

- 5.4. Border agencies or OGAs identified by the Chairs are free to nominate their representatives to the Committee, as described at 5.4. It is the relevant member's responsibility to ensure that such a person or persons have appropriate knowledge and skills and that he/she would report back to his/her organization the issues discussed at the Committee and any decisions made.
- 5.5. From time to time and on specific needs, the Chairs may also extend ad hoc invitations for a specific Committee's meeting to a representative from another Ministry, or an International Organization.
- 5.6. International or National Technical Advisors may also be invited by the Chairs to support or participate in the meetings, but they will not have the right to vote.
- 5.7. The Committee's permanent membership is as follows:

Standing Members

a) Customs Authority (CA)

- CA Commissioner;
- CA National Director of Operations;
- CA National Director of Customs Compliance Management;
- Committee secretariat: National Director for Administration and Finance.

b) Quarantine and Biosecurity

- Director-General
- Up to 1 standing staff member.

c) Migration Service

- Director-General
- Up to 1 standing staff member.

d) Ministry of Health

- Director-General
- Up to 2 standing staff-member.

e) Polícia Nacional Timor-Leste, PNTL

- Commissioner, PNTL
- Commanders, UPF, UPM and Traffic Unit Police

f) Ministry of Transport and Telecommunications

- Director-General
- Up to 3 standing members; APORTIL, ANATL & DNNT.

g) Ministry of Tourism, Commerce and Industry

- Director-General,
- Up to 2 standing staff members,

h) Other members, at the discretion of the Chair

Protocols

5.8. Upon formal invitation from the Chairs, organizations will submit to the Committee secretariat (Customs Authority IRCU) the name of their nominee.

5.9. Only one (1) representative, with the right to vote, from each participating OGA can attend meetings, but an observer may be granted access, upon request to the Chairs, to support a member requiring additional representation for a particular subject area.

5.10. Members of the Committee must ensure that they have channels of communication in place with their respective Ministries, in relation to the work of the Committee. These channels should be used to disseminate matters of interest to that membership and to enable that membership to bring issues before the Committee.

5.11. The Chairs will periodically review the membership of the Committee to ensure that it continues to meet its functions and responsibilities.

5.12. OGAs will also be asked to review their nominees from time to time to ensure effective representation on the Committee.

5.13. Customs Authority permanent and invited representatives, as well as its technical advisors, will provide support at each meeting, relevant to the agenda items.

6. Working Groups

The Committee may establish Working Groups to examine specific issues (e.g. special interest groups, technical issues related to automation, traveler and cargo data, procedures, legislation, prohibited/restricted goods, etc.). Any Working Group will agree to its own working arrangements and can have broader representation but will adhere to broad guidelines and reporting dates given by the Committee.

7. Administrative Arrangements

The following administrative arrangements will apply to the Committee:

- a) The Customs Authority will provide the Secretariat to the Committee;
- b) Meetings will usually be held at least every six (6) weeks, but this may be varied, if additional meetings are considered necessary by Committee members;
- c) To expedite communication with its members, the Committee's secretariat **will use email** to call for meetings, issue reminders, and to circulate agendas and papers;
- d) It is the responsibility of each member to provide the Secretariat with a working and correct email address and other contact details, as no hard copies of invitations and Agenda papers will be sent;
- e) Three (3) weeks before each meeting the CA secretariat will circulate a reminder email of the upcoming meeting;
- f) Agenda items may be proposed by the Chairs or any of the Committee members, within the broad topics that fall within the agreed functions of the BMC. However, the Chairs may limit the number of agenda items to be examined during a particular meeting to ensure key topics are discussed;
- g) The draft Agenda for each meeting will be circulated by email, no later than one week before the date of the meeting. The draft Agenda will include significant items to be discussed;
- h) Members will be free to raise issues under "Other Business" at the meeting, although detailed discussion may not be possible at that particular meeting;
- i) Documents for discussions will be circulated by email, as early as possible prior to the meeting, but no later than three (3) working days before the date of the meeting;
- j) A draft Minutes of each meeting will be circulated to members in soft copy by email no later than seven (7) working days after the meeting, with ten (10) working days allowed thereafter for comments and observations.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX