

ACT

To establish a Roads Authority to manage the national road network of Namibia; and to provide for matters incidental thereto.

(Signed by the President on 6 October 1999)

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BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

**PART I
PRELIMINARY PROVISIONS**

Definitions

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

“Administration” means the Road Fund Administration established by section 2 of the Road Fund Administration Act;

“Authority” means the Roads Authority established by section 2;

“board” means the board of directors appointed under section 4;

“chief executive officer” means the person appointed under section 14 as chief executive officer of the Authority;

“committee” means a committee established under section 12;

“director” means a member of the board;

“Minister” means the Minister responsible for Transport;

“national road network” means the road network consisting of every trunk road, main road and district road proclaimed in terms of Chapter III of the Roads Ordinance;

“performance statement” means a performance statement referred to in section 18;

“prescribed” means prescribed by regulation;

“procedures agreement” means a procedures agreement referred to in section 17;

“Road Fund” means the Road Fund established by section 16 of the Road Fund Administration Act;

“Road Fund Administration Act” means the Road Fund Administration Act, 1999;

“Roads Ordinance” means the Roads Ordinance, 1972 (Ordinance No. 17 of 1972);

“staff member” means a staff member as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995);

“this Act” includes the regulations made thereunder;

“transfer date” means the date determined by the Minister under section 27(1).

PART II THE ROADS AUTHORITY

Establishment of the Roads Authority

2. There is hereby established a juristic person to be known as the Roads Authority.

Objects of the Authority

3. Subject to this Act and the Road Fund Administration Act, the object of the Authority is to manage the national road network in accordance with section 16 with a view to achieving a safe and efficient road sector.

Board of directors

4. (1) There shall be a board of directors of the Authority which shall, subject to this Act, be responsible for the policy, control and management of the Authority.

(2) The board shall consist of not less than three and not more than five directors who shall be appointed by the Minister, subject to section 5, from amongst persons who have expertise relevant to the functions of the Authority and of whom the majority shall be persons who are not staff members.

- (3) The Minister shall appoint the chairperson of the board from amongst the directors.

(4) The names and nationality of the persons appointed as directors and the date of their appointment shall be notified in the *Gazette*.

Disqualification for appointment as director

5. A person shall not qualify for appointment as a director if he or she -

- (a) is an unrehabilitated insolvent; or
- (b) has during the period of ten years immediately preceding the date of commencement of this Act, or at any time after that date, been convicted of a criminal offence and sentenced to imprisonment without the option of a fine.

Tenure of office of directors

6. Subject to section 7, a director shall hold office for a period of three years, and shall, at the expiry of such period, be eligible for re-appointment.

Vacation of office and filling of vacancies

7. (1) A director shall vacate his or her office if he or she -

- (a) resigns that office by written notice to the Minister;
- (b) has been absent from three consecutive meetings of the board without the permission of the

chairperson of the board;

- (c) becomes subject to a disqualification referred to in section 5; or
- (d) is removed from office by the Minister under subsection (2).

(2) The Minister may, by notice in writing, remove a director from office if the Minister, after giving the director a reasonable opportunity to be heard, is satisfied that such director -

- (a) is incapacitated by physical or mental illness; or
- (b) for any other good reason, is unable or unfit to discharge the functions of a director.

(3) If a director dies, or his or her office becomes vacant in terms of subsection (1), the Minister shall, with due regard to section 4(2), appoint a person to fill the vacancy for the unexpired portion of the term of office of the director in whose stead he or she is appointed.

Alternate directors

8. The Minister may, with due regard to section 4(2), appoint for each director a person as alternate director to act in the place of the director in the event of that director's absence or inability to act as a director.

Meetings of the board

9. (1) The first meeting of the board shall be held at such time and place as the Minister may determine, and thereafter, subject to subsection (2), meetings of the board shall be held at such times and places as the board may determine, but at least one such meeting shall be held every three months.

- (2) The chairperson of the board shall convene a special meeting of the board when -
 - (a) the Minister in writing requests him or her to do so; or
 - (b) at least two directors in writing request him or her to do so.

(3) The chairperson of the board shall place on the agenda of a meeting of the board any matter pertaining to the functions of the Authority which the Minister in writing has requested to be considered and decided by the board at that meeting.

(4) The chairperson of the board or, in his or her absence, such director as the directors present shall elect, shall preside at a meeting of the board.

- (5) Three directors shall form a quorum at a meeting of the board.

(6) A decision of a majority of the directors present at a meeting of the board shall be the decision of the board and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

- (7) The board may permit any person, other than a director, who has an interest in any matter due to be

considered at that meeting, or any representative of that person, to attend and to take part in such discussions of the board as in the opinion of the person presiding relate to such matter, but such person or representative shall not be entitled to vote.

(8) A decision of the board shall not be rendered invalid by reason only of a vacancy on the board or of the fact that a person who is not entitled to sit as a director did so sit when the decision was taken, if such decision was taken by the requisite majority of the directors who were present at the time and entitled to vote.

(9) The chairperson of the board shall cause a record to be kept of the proceedings of its meetings, and shall cause that record to be submitted to the Minister as soon as possible after a meeting of the board.

(10) The board shall determine the procedure to be followed at its meetings.

Disclosure of interest

10. (1) If a director or an alternate director or a member of a committee, not being a director or alternate director, or his or her spouse, or any company, close corporation or partnership of which he or she or his or her spouse is a director, shareholder, member or partner, is in any way directly or indirectly interested in a contract entered into or proposed to be entered into by the Authority, or in any other matter which is the subject of consideration by the board and which may cause a conflict of interests in the performance of his or her duties as director, alternate director or committee member, he or she shall fully disclose the nature of such interest as soon as possible after the commencement of the meeting of the board or a committee at which that contract, proposed contract or other matter is a subject of consideration, and that director, alternate director or member of the committee shall not take part in the consideration of, or vote on, any question relating to that contract, proposed contract or matter.

(2) If a director, an alternate director or a member of a committee referred to in subsection (1) fails to disclose a conflict of interest as required by that subsection and is present at a meeting of the board or a committee, or in any manner participates in the consideration of, or vote on, any question relating to the contract or other matter referred to in subsection (1), the proceedings in relation to that contract or matter shall, as soon as such non-disclosure is discovered, be rendered invalid and thereafter be reviewed by the board or the committee, as the case may be, in the absence of the director, alternate director or committee member concerned.

(3) A person who knowingly fails to comply with subsection (1) shall be guilty of an offence and be liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) If a person is convicted of an offence in terms of subsection (3), the court convicting that person shall summarily enquire into, and determine the monetary value of, any advantage or potential advantage which that person has or could have gained in consequence of that offence.

(5) Any person referred to in subsection (4) shall on conviction, and in addition to any fine or imprisonment imposed in terms of subsection (3), be liable to a fine not exceeding three times the value of the advantage or potential advantage determined in terms of subsection (4), or to imprisonment for a period not exceeding fifteen years or to both such fine and imprisonment.

(6) A magistrate's court shall have jurisdiction to impose an additional penalty referred to in subsection (5) even though that penalty may, either alone or together with any other punishment imposed by the court, exceed the punitive jurisdiction of a magistrate's court.

Allowances

11. (1) There shall be paid to a director and an alternate director and a member of a committee, not being a director or alternate director, in respect of his or her services, out of the Road Fund, such allowances as the board, in consultation with the Minister, may determine.

(2) Different allowances may be determined under subsection (1) according to the different offices held by the persons concerned or the work performed by them.

Committees of the board

12. (1) The board may from time to time establish any committee to assist the board in the performance of its functions, subject to such conditions and procedures as the board may determine.

(2) The board may appoint as a member of a committee any person who is not a director, but at least one member of every committee shall be a director.

Restriction of liability

13. A director, an alternate director or a member of a committee shall not be personally liable for any loss or damage arising out of, or in connection with, the performance of his or her duties, unless the loss or damage is due to his or her wilful misconduct, gross negligence or failure to comply with any provision of this Act or a direction or decision given thereunder.

Chief executive officer and other employees

14. (1) The Authority, in consultation with the Minister, shall appoint a person who has expertise relevant to the functions of the Authority as chief executive officer of the Authority.

(2) The chief executive officer shall be responsible for the administration of the affairs of the Authority in accordance with the policies and directions of the board.

(3) The Authority may appoint such other employees as it considers necessary to assist the chief executive officer.

(4) The Authority in consultation with the Minister shall determine the remuneration and other conditions of service of its employees, including conditions of service in respect of medical aid, housing, gratuities and pension benefits.

(5) Section 10 shall *mutatis mutandis* apply to the chief executive officer.

Functions of the Authority

15. (1) Subject to this Act, the functions of the Authority are to -

(a) manage, subject to section 16, the national road network;

- (b) make recommendations to the Minister regarding the application of this Act, amendments to it and the making of regulations; and
- (c) advise and assist the Minister or an approved authority, as defined in section 1 of the Road Fund Administration Act, on such conditions as may be agreed upon, or any other person, subject to the approval of the Minister and on such conditions as the Minister may determine, in regard to -
 - (i) any matter relating to the planning, design, construction and maintenance of roads, whether such roads are part of the national road network or not; or
 - (ii) the exercise of any power or the performance of any duty which the Minister or any such approved authority or such person may or is required to exercise or perform under this Act or any other law.
- (2) Subject to this Act, the Authority may -
 - (a) with the consent of the Minister, form one or more companies under the Companies Act, 1973 (Act No. 61 of 1973), to undertake any of the functions of the Authority;
 - (b) open banking accounts with banking institutions;
 - (c) acquire, hire and improve property required for the performance of the functions of the Authority and dispose of any such property, but the Authority shall only acquire or dispose of immovable property with the consent of the Minister and subject to such conditions as the Minister may determine; and
 - (d) exercise such other powers or perform such other duties as may be provided for in this Act or in any other law and do all such things as the Authority considers necessary or expedient in order to achieve the objects of this Act.

PART III MANAGEMENT OF ROAD NETWORK

Management of road network

16. (1) Notwithstanding anything to the contrary contained in any other law, but subject to this Act and with due regard to the funds at its disposal, the Authority shall undertake the management of the national road network, including -

- (a) the planning, designing, construction and maintenance of roads which are part of the national road network;
- (b) the quality control of materials required for the proper construction and maintenance of roads;
- (c) the supervision of work contracted out in terms of subsection (2);
- (d) the operation of road management systems;
- (e) subject to any other law, the prevention of the excessive damaging of roads by road users or any other

parties; and

- (f) the performance of any other function assigned to it by or under any law, or by the Minister by notice in the *Gazette*, which is necessary in order to achieve the objectives of this Act or for any purpose relating to road traffic or road transportation.

(2) Subject to subsection (3), the Authority may -

- (a) enter into an agreement with any person, body or authority to perform any act or provide any service for or on behalf of the Authority in respect of any matter related to the functions of the Authority; and
- (b) in writing delegate any of its powers, including any delegated power, to the person, body or authority referred to in paragraph (a) if the Authority considers it necessary for the efficient performance of any such act or the provision of any such service.

(3) Subject to section 27(10), the Authority shall not itself undertake any work for the construction or maintenance of any road but shall cause such work to be done by any outside contractor with whom the Authority has entered into a contract for the purpose.

(4) The Minister, after consultation with the Authority, may give the Authority a written direction to undertake any road project or programme which the Minister considers necessary in the national interest for improving accessibility to or within any area in Namibia, and the Authority shall comply with a direction so given, but subject to the funding of such project or programme from moneys made available either through an appropriation by Parliament or any other source as may be agreed upon by the Minister, the Authority and the Administration.

(5) The Minister may prescribe minimum standards and measures for the management of the roads comprising the national road network, and minimum standards for the maintenance of such road network which are reasonably required to -

- (a) achieve a safe road system;
- (b) ensure compliance with the international obligations of the State; or
- (c) cause the least possible disruption of the environment, but subject to the provisions of any other law.

(6) Notwithstanding anything to the contrary contained in the Roads Ordinance, the Minister, in consultation with the Authority, shall, by notice in the *Gazette*, and subject to the conditions, qualifications or exceptions as may be specified in the notice, transfer to the Authority all powers and duties, excluding a power to make regulations or to hear an appeal, conferred or imposed on the Minister or any other functionary by that Ordinance which relate to the functions of the Authority and are required to be vested with the Authority to enable it to perform its functions under this Act efficiently.

(7) Notwithstanding the provisions of any other law, the Authority shall be entitled to approach any competent court in order to seek an award for compensation against any person alleged to be responsible for the damaging of a road managed by the Authority.

Procedures agreement

17. (1) Within two months after the transfer date, or such longer period as the Administration may determine, the Authority shall, in accordance with such procedures as the Administration may stipulate, submit to the Administration a draft procedures agreement containing such particulars as are necessary to enable the Administration to assess whether funds accruing to the Authority will be efficiently utilized by it for the performance of its functions, including -

- (a) the management and financial systems to be implemented by the Authority, and measures to be introduced by it to ensure -
 - (i) compliance with the rules and principles contemplated in section 19(2) of the Road Fund Administration Act; and
 - (ii) the efficient utilisation of funds allocated to it in respect of projects and programmes included in the business plan referred to in section 21 of the Road Fund Administration Act;
- (b) the principles to be applied in budgeting for administrative expenditure, including the cost of acquiring immovable property for administrative purposes;
- (c) the procedures to be followed by the Authority in the calling for, and the evaluation and awarding of, tenders and in the negotiation of agreements with, any person, body or authority referred to in section 16(2); and
- (d) any other matter relating to the performance of the Authority's functions under this Act which the Administration may require.

(2) The Administration shall approve a draft procedures agreement either without amendments or with such amendments as may be effected in consultation with the Authority.

(3) Upon approval of the draft procedures agreement by the Administration, it shall be signed by the chairperson of the board of directors of the Administration and the chairperson of the board of the Authority.

(4) The Authority and the Administration shall review the procedures agreement from time to time, but at least once every three years.

(5) Before finalising a draft procedures agreement or an amendment to it, the Authority shall consult with such interested parties as the Minister may determine.

(6) The Authority shall -

- (a) make a copy of a procedures agreement and every amendment thereof available for public inspection at its office; and
- (b) cause it to be published, in such form as the Minister may determine, in at least two daily newspapers circulating nation-wide.

Performance statement

18. (1) Within two months after the transfer date, or such longer period as the Minister may determine, the Authority shall submit to the Minister a draft performance statement containing such particulars as will enable the Minister to assess the performance of the Authority, including-

- (a) the Authority ' s short and medium term operational objectives;
- (b) the general strategy which the Authority intends to employ in order to achieve its objectives;
- (c) the manner in which the Authority will implement the standards and measures prescribed under section 16(5);
- (d) the principles which will be applied by the Authority in relation to its policies of appointment and promotion of staff of the Authority; and
- (e) particulars of any other matter relating to the performance of the Authority's functions under this Act as may be required by the Minister.

(2) The Minister shall approve a draft performance statement either without amendments or with such amendments as may be effected in consultation with the Authority.

(3) Upon approval of the draft performance statement by the Minister, it shall be signed by the Minister and the chairperson of the board.

(4) The Authority and the Minister shall review the performance statement from time to time, but at least once every three years.

(5) Before finalising a draft performance statement or an amendment to it, the Authority shall consult with such interested parties as the Minister may determine.

(6) The Authority shall -

- (a) make a copy of a performance statement available for public inspection at its office; and
- (b) publish it, in such form as the Minister may determine, in at least two daily newspapers circulating nation-wide.

PART IV FINANCIAL AND GENERAL PROVISIONS

Funds of the Authority

19. (1) The funds of the Authority shall consist of such moneys as may be obtained by the Authority-

- (a) by virtue of any allocation made to it by the Administration under Part III of the Road Fund Administration Act;
- (b) by virtue of any appropriation made by Parliament;

- (c) by virtue of any donation or grant made to the Authority; or
- (d) from any other source.

(2) Any amount which is derived by the Authority from the sale of any assets of the Authority shall, to the extent and in the manner as may be agreed upon between the Authority and the Administration, be paid over to the Fund or be applied in such other manner as may be agreed.

Financial year

20. The financial year of the Authority shall be the same as that of the Administration as determined in terms of section 23 of the Road Fund Administration Act.

Accounting and auditing

21. (1) The Authority shall keep such accounting records as are necessary to reflect fairly the state of affairs and business of the Authority and to explain the transactions and financial condition of the Authority.

(2) The accounting records and financial statements of the Authority shall reflect specifically any amounts received by virtue of an appropriation by Parliament or any grant or donation made for the purpose of a specific project or programme and the amounts expended in connection with such project or programme.

(3) The accounting records and the financial statements of the Authority and of every company formed by it in terms of section 15(2)(a) shall be audited annually, to the satisfaction of the Auditor-General and subject to such directives as he or she may issue, by a person registered as an auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951) and appointed by the Authority in consultation with the Auditor-General.

Annual report

22. (1) Within six months after the end of each financial year the Authority shall submit to the Minister a report on the activities of the Authority during that financial year.

(2) The report shall contain -

(a) particulars of projects and programmes relating to -

(i) advice furnished or assistance rendered in terms of any agreement contemplated in section 15(1)(c); and

(ii) the management of the national road network as contemplated in section 16(1);

(b) an assessment by the Authority of its achievements in relation to its performance statement; and

(c) such other matters as the Minister may require.

(2) The Authority shall submit to the Minister, together with the report referred to in subsection (1), the audited financial statements of the Authority and of each of its subsidiary companies, including the auditor's report on

those statements.

- (3) The Minister shall lay -
 - (a) the annual report referred to in subsection (1);
 - (b) the financial statements and the auditor's report referred to in subsection (2); and
 - (c) the relevant performance statement and any amendment thereof,

upon the Table in Parliament within 28 days after receipt thereof if Parliament is in session or, if Parliament is not then in session, within 28 days after the commencement of its next ordinary session.

Failure of Authority to comply with certain provisions

23. (1) Any person who is of the opinion that the Authority has failed to comply with any provision of this Act, or a performance statement or a procedures agreement, may lodge with the Minister a written complaint, which shall -

- (a) set out the grounds of the complaint;
- (b) state the full names, the address and the interest of the complainant in the matter; and
- (c) if appropriate, be accompanied by any proof of the alleged failure which is in the possession of the complainant.

(2) On receiving a complaint in terms of subsection (1), the Minister shall send a copy thereof to the Authority.

(3) The Authority shall, within 14 days after receipt of a copy of the complaint in terms of subsection (2), furnish the Minister with a written reply.

(4) After receipt of the Authority's reply in terms of subsection (3), and subject to subsection (5) the Minister may -

- (a) dismiss the complaint; or
- (b) if the Minister is satisfied that the Authority has failed to comply with the provision referred to in subsection (1), by written notice direct the Authority to comply with such provision within such period as may be determined and specified by the Minister in the notice.

(5) Where the Minister considers it necessary or desirable for the purpose of making a decision in terms of subsection (4), the Minister may appoint a committee, on such terms and conditions as he or she may determine, to investigate the complaint, to hear any representations made by the complainant and the Authority and to report to the Minister.

(6) The procedure for an investigation in terms of subsection (5) shall be as prescribed, and a committee referred to in that subsection shall, for the purpose of such investigation, have the prescribed powers with regard to the

summoning and examination of witnesses and the production of books or objects.

(7) The costs incidental to the appointment of a committee and the conducting of an investigation in terms of subsection (5) shall be paid from moneys appropriated by Parliament for such purposes.

(8) Any person who wilfully -

(a) interrupts the proceedings of a committee referred to in subsection (5);

(b) hinders or obstructs such committee in the performance of its functions, or

(c) contravenes or fails to comply with any regulation referred to in subsection (6) relating to the duties or conduct of persons summoned to appear before a committee referred to in subsection (5) to give evidence or produce any book or object.

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

State land may be made available to the Authority

24. Subject to this Act or any other law, the Minister may, in consultation with the relevant competent authority, and subject to such terms and conditions as may be agreed upon, make State land or land controlled by the State or any other facility on that land or any other movable property of the State available to the Authority for the performance of the functions of the Authority.

Delegation of powers

25. (1) Subject to this Act -

(a) the Minister may, on such conditions as he or she considers appropriate, delegate in writing to the board or the chief executive officer any power conferred upon him or her by this Act, excluding the powers conferred by section 26;

(b) the board may, on such conditions as it considers appropriate, delegate to a committee or the chief executive officer or any other employee of the Authority any power conferred upon it by this Act or delegated to it under paragraph (a);

(c) the chief executive officer may, on such conditions as he or she considers appropriate and with the approval of the board, delegate to any employee of the Authority any power conferred upon him or her by this Act or delegated to him or her under paragraph (a) or (b).

(2) A delegation shall not prevent the exercise of the relevant power by the Minister, the board or the chief executive officer, as the case may be.

Regulations

26. The Minister may, after consultation with the Authority, make regulations in relation to -

- (a) any matter which in terms of this Act is required or permitted to be prescribed;
- (b) the financial management and control of the affairs of the Authority;
- (c) the manner in which the Authority may exercise any power or perform any duty or function in terms of this Act; or
- (d) any other matter which the Minister considers necessary or expedient to give effect to the objects of this Act.

Transitional provisions

27. (1) Subject to this section, the Minister, in consultation with the Minister responsible for Finance, and on such conditions as the Minister may determine, shall transfer to the Authority, with effect from a date determined by the Minister by notice in the *Gazette*, such assets, liabilities, rights or obligations of the State which relate to or are connected with the management of roads by the Ministry as may, in the opinion of the Minister, be required by the Authority.

(2) Notwithstanding any law to the contrary, the Authority shall, with effect from the transfer date, be vested with the ownership of the assets and rights and be charged with the liabilities and obligations transferred or assigned to it under subsection (1).

(3) A certificate issued by the Minister in which it is stated that any State land or a servitude or other real right or lease or any other asset or right described in such certificate has been transferred to the Authority in terms of subsection (1), shall be sufficient proof that the asset or right so described vests in the Authority.

(4) Upon the submission of a certificate referred to in subsection (3) to the Registrar of Deeds or to any other person in charge of any other office where a register or record of the ownership of or entitlement to an asset or right described in such certificate is being kept, the Registrar or such person shall make such entries in or on any relevant register, title deed or other document in his or her office or submitted to him or her as may be necessary to effect the transfer in the name of the Authority.

(5) Notwithstanding any law to the contrary, no servitude or other right of any kind in respect of State land transferred to the Authority in terms of subsection (1) shall be acquired by prescription.

(6) The Authority shall be substituted for the State as a contracting party in respect of any agreement transferred to the Authority in terms of subsection (1), without that substitution bringing about a novation of such agreement.

(7) The value of assets and liabilities transferred to the Authority in terms of subsection (1) shall be determined by the Minister after consultation with the Minister responsible for Finance.

(8) Notwithstanding any law to the contrary, no stamp duties, transfer duties, registration fees, sales tax, additional sales levy or any other duty, fee, tax or levy payable in terms of any law for the acquisition or transfer of assets or rights shall be payable in respect of the transfer of assets or rights by the State to the Authority in terms of subsection (1).

(9) Notwithstanding any law to the contrary, the Minister may, in consultation with the Prime Minister

and in accordance with the provisions of an agreement concluded with the Authority, transfer to the Authority any staff member, but subject to the consent of the staff member concerned.

- (10) The Authority shall -
 - (a) before the transfer date defined in section 1 of the Roads Contractor Company Act, 1999, entrust to the Department of Transport all work relating to the construction and maintenance of roads, to the extent that such work was executed by that department before that date; and
 - (b) during the first period of three years after the transfer date contemplated in paragraph (a), entrust to the company referred to in section 2 of that Act, all work contemplated in that paragraph,

except if the Authority and the Department or the company, as the case may be, with the approval of the Minister in a particular case, agree otherwise.

Short title and commencement

28. (1) This Act shall be called the Roads Authority Act, 1999, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

- (2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.
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