

ACT

To establish a Road Fund Administration to manage a road user charging system; to establish a Road Fund; 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.(1) In this Act, unless the context otherwise indicates -

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

“administrative expenditure” includes the cost -

- (a) of acquiring immovable property for administrative purposes; and
- (b) of advisory services required by the Minister or the Minister responsible for Transport in the performance of his or her functions under this Act or the Roads Authority Act;

“approved authority” means any person, body or authority approved under subsection (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 Administration;

“committee” means a committee established under section 12;

“director” means a member of the board;

“Fund” means the Road Fund established by section 16;

“Local Authorities Act” means the Local Authorities Act, 1992 (Act No. 23 of 1992);

“Minister” means the Minister responsible for Finance;

“national road network” means the national road network as defined in section 1 of the Roads Authority Act;

“performance statement” means a performance statement referred to in section 22;

“prescribed” means prescribed by regulation;

“Regional Councils Act” means the Regional Councils Act, 1992 (Act No. 22 of 1992);

“Roads Authority Act” means the Roads Authority Act, 1999;

“road user” means a person who operates a motor vehicle on a public road contemplated in section 18(8);

“road user charge” means any charge, fee or levy imposed under section 18;

“road user charging system” means the system providing for independent regulation of road funding in accordance with economic efficiency criteria and full cost recovery from road users comprising, in sequential order, the following:

- (i) The determination of the amount of funding for road projects and programmes;
- (i) the determination of the manner in which such amount of funding shall be allocated;
- (iii) the determination, and the imposition, of the types and rates of road user charges;

“staff member” means a staff member as defined in section 1 of the Public Service Act;

“this Act” includes the regulations made thereunder;

“transfer date” means the date determined by the Minister responsible for Transport under section 29(1).

- (2) The Administration -
 - (a) may, either of its own motion or upon application made to it, approve any person, body or authority, who or which performs any function or renders any service in relation to the national road network, including any traffic related function or service, as being eligible for funding from the Fund in terms of this Act; and
 - (b) shall cause the name of every approved authority and any other prescribed particulars to be notified in the *Gazette*.

PART II THE ROAD FUND ADMINISTRATION

Establishment of the Road Fund Administration

2. There is hereby established a juristic person to be known as the Road Fund Administration.

Objects of the Administration

3. Subject to this Act, the object of the Administration is to manage the road user charging system in such a manner as to secure and allocate sufficient funding for the payment of expenditure as contemplated in section 17(1), with a view to achieving a safe and economically efficient road sector.

Board of directors

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

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

(3) The Minister, in consultation with the Minister responsible for Transport, 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 that 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, in consultation with the Minister responsible for Transport, 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, in consultation with the Minister responsible for Transport, and 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, in consultation with the Minister responsible for Transport, and with due regard to section 4(2), may appoint for any 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 meeting shall be held every four 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 shall place on the agenda of a meeting of the board any matter pertaining to the functions of the Administration 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 board 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 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 Administration, 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, 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 enquire into, and determine the 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 (3) even though that penalty may, either alone or together with any other punishment imposed by that court, exceed the punitive jurisdiction of a magistrate's court.

Allowances

11.(1) There shall be paid out of the Fund 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, 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, or a direction or decision given under, this Act.

Chief executive officer and other employees

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

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

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

(4) The Administration shall -

- (a) in consultation with the Minister, determine the remuneration and other conditions of service of its employees who are in management; and
- (b) determine the remuneration and other conditions of service of its employees who are not in management;

which may include 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 Administration

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

- (a) to manage, subject to sections 16 and 17, the Fund;
- (b) to impose, subject to section 18, road user charges, to determine the rates of those charges and to collect those charges;
- (c) to determine, subject to section 19, the amount of the funding to be made available through the road user charging system;
- (d) to determine, subject to section 20, the manner in which the funding referred to in paragraph (c) shall be allocated;
- (e) to implement appropriate measures for the effective monitoring of compliance -
 - (i) by the Roads Authority, with the provisions of a procedures agreement contemplated in section 17 of the Roads Authority Act; and
 - (ii) by an approved authority, with the conditions on which funding has been provided to it under this Act;
- (f) to make recommendations to the Minister regarding the application of this Act, amendments to it and the making of regulations;

- (g) to advise and assist, on such conditions as may be agreed upon, the Minister, the Minister responsible for Transport, the Roads Authority or any approved authority in regard to -
- (i) the financial aspects of the planning, design, construction, maintenance and safe and efficient use of roads; or
 - (ii) the exercise of any power or the performance of any duty which the Minister, the Roads Authority or approved authority may or is required to exercise or perform under this Act or any other law; and
- (h) if so requested by any donor, to administer on behalf of such donor, and on such conditions as may be agreed upon, any funds granted or donated by the donor in respect of any project or programme to be undertaken by the Roads Authority or an approved authority.
- (2) Subject to this Act, the Administration may -
- (a) open banking accounts with banking institutions;
 - (b) invest moneys of the Fund;
 - (c) borrow moneys for any purpose for which moneys in the Fund may be utilised in terms of section 17;
 - (d) acquire, hire and improve property required for the performance of the functions of the Administration, and dispose of any such property, but the Administration shall acquire or dispose of immovable property only with the consent of the Minister, and subject to such conditions as the Minister may determine; and
 - (e) exercise such other powers or perform such other duties as may be provided for in this Act or in any other law and, generally to do all such things as it considers necessary or expedient in order to achieve the objects of this Act.
- (3) Notwithstanding the other provisions of this Act, the Administration may -
- (a) enter into an agreement with any person, body or authority to perform any act or render any service on behalf or in favour of the Administration in respect of any matter related to the functions of the Administration; and
 - (b) in writing delegate any of its powers, including any delegated power, to such person, body or authority if the Administration considers it necessary for the efficient performance of any act or service referred to in paragraph (a).

PART III

THE ROAD USER CHARGING SYSTEM

Establishment of the Road Fund

- 16.(1)** There is hereby established a fund to be known as the Road Fund into which shall be paid -
- (a) all moneys collected in respect of road user charges;
 - (b) moneys appropriated by Parliament;
 - (c) moneys accruing to the Fund through the sale of any assets of the Administration;
 - (d) moneys paid to the Fund by the Authority in respect of the proceeds of the sale of any assets of the Authority;
 - (e) any capital gains made and interest or dividends earned on investments;

- (f) any donation or grant made in respect of any project or programme;
- (g) any moneys received in respect of a loan obtained by the Administration;
- (h) any moneys payable in terms of a judgement relating to compensation for the damaging of a road managed by the Roads Authority;
- (i) any fines imposed in respect of any contravention of, or failure to comply with, any provision in a law relating to the overloading of vehicles; and
- (j) any moneys which, with the consent of the Minister, may accrue to the Fund from any other source.

(2) The Administration shall manage the Fund in accordance with sound principles of financial management, and by observing in particular the measures implemented to protect the liquidity of the Fund as contemplated in section 22(1)(d).

Utilization of the Fund

17.(1) The Administration shall, subject to subsection (2), and to the extent that it is to the benefit of road users, utilize the moneys available in the Fund -

- (a) to defray the cost of the management of the national road network as provided for in section 16(1) of the Roads Authority Act, including the administrative expenditure of the Roads Authority and the payment of compensation referred to in section 65 of the Roads Ordinance, 1972;
- (b) to defray the administrative expenditure of the Administration, including expenditure relating to the management of the road user charging system;
- (c) to defray the cost of -
 - (i) the planning, design, construction and maintenance of any major urban arterial road; and
 - (ii) the traffic related maintenance in respect of any road, in any local authority area, as defined in section 1 of the Local Authorities Act, or any settlement area, as defined in section 1 of the Regional Councils Act, not being a road which is part of the national road network;
- (d) to make contributions towards the cost of operation of any traffic information system established and maintained in terms of the road traffic laws;
- (e) to defray the cost of traffic law enforcement and adjudication functions performed by any competent authority for purposes of promoting a safe and efficient road system, including the control of the overloading of vehicles;
- (f) subject to the approval of the Minister, to make contributions towards the cost of the operation of any vehicle testing station or driving testing centre;
- (g) to defray the cost of road research studies carried out by any person approved by the Administration;
- (h) to defray the expenditure referred to in section 15 of the National Road Safety Act, 1972 (Act No. 9 of 1972) by way of transferring to the Central Road Safety Fund, established by that section, such part of a road user charge referred to in section 18(1)(d) of this Act, as may be necessary for the defrayal of that expenditure;
- (i) to make payments, as the Minister may determine, in respect of the capital, interest and incidental costs or charges of any loan obtained by the Government of Namibia, before the commencement of this Act, for any purpose related to the management of the national road network referred to in

paragraph (a), irrespective of whether the obligation pertaining to such loan has been assigned to the Administration in terms of section 29(2)(a);

- (j) to make payments in respect of the capital, interest and incidental costs or charges of loans obtained by the Fund;
- (k) to establish a reserve fund for the purposes of the objects contemplated in section 20(4)(b)(ii) and section 22(1)(d);
- (l) for the payment of any compensation due for any damage arising out of the performance of the functions conferred upon or entrusted to the Roads Authority by or under any law, except where such damage is due to a deficiency in any standards referred to in section 16(5) of the Roads Authority Act;
- (m) to defray the cost of insurance against any claim for damage referred to in paragraph (l); and
- (n) for any other expenditure related to the achievement of the objects of this Act as approved by the Minister.

(2) The Administration shall, after compliance with such consultation procedures as may be determined by the Minister, determine the types and maximum amounts of expenditure which may be incurred in terms of paragraph (c), (d), (e), (f), (g) or (n) of subsection (1).

(3) Any moneys accruing to the Fund by virtue of an appropriation by Parliament or a grant or donation which has been made for a specific purpose shall be utilized only for that purpose and in accordance with such conditions as may attach to that appropriation or grant or donation.

(4) The Administration shall not expend any moneys from the Fund except in accordance with an approved budget referred to in section 21(3).

(5) Notwithstanding this Act or any other law, the assets of the Fund shall not be subject to attachment or sale in execution.

(6) For the purpose of subparagraph (i) of subsection (1)(c) "major urban arterial road" means a road in an urban area on which the major portion of the traffic constitutes traffic which enters or travels through a town and which is also used by local traffic travelling from one point to another within a town, but which does not directly serve any individual erven, and which has been designated as such road by the Minister by notice in the *Gazette*.

Determination of road user charges

18.(1) Subject to section 19, the Administration may from time to time after consultation with the Minister and such parties as the Minister may direct, by notice in the *Gazette*, and in accordance with such principles as may be prescribed, impose any one or more of the following road user charges for the achievement of the objects of this Act, namely:

- (a) A charge on any motor vehicle, whether registered in Namibia or not, in respect of the travelling distance in the course of on-road use, and which may be based on the mass, length, width or height of the vehicle or its loading, or the number of axles of such vehicle, or any combination of such factors;
 - (b) an entry fee in respect of motor vehicles not registered in Namibia that temporarily enter Namibia;
 - (c) registration and annual licence fees in respect of motor vehicles registered in Namibia; or
 - (d) subject to subsection (4)(f), a levy on every litre of petrol and every litre of diesel sold by any undertaking at any point in Namibia and which is to be included in any determination of the selling price of petrol or diesel, as the case may be, under any law relating to petroleum products.
- (2) Subject to subsection (3), the Administration may, in a notice under subsection (1), impose any

road user charge at different rates in respect of different classes of motor vehicles, different roads, different categories of road-users or any other basis of differentiation as the Administration may determine.

- (3) In determining the rates of road user charges under subsection (1), the Administration shall ensure -
- (a) the raising of adequate revenue for the Fund to cover the amount of funding as determined under section 20(4), taking into account moneys accruing to the Fund, the Roads Authority and any approved authority by virtue of an appropriation by Parliament or a donation or a grant by any person, body or authority;
 - (b) to the extent practicable, that the rates and combinations of such charges affecting different classes of motor vehicles are equitable in relation to their use of the road network and the benefits derived from such use;
 - (c) to the extent practicable, that the rates and combinations of such charges shall promote efficiency in the use of resources, including roads, motor vehicles and fuels; and
 - (d) that in respect of the rates and combinations of such charges there shall be no discrimination between local and foreign road-users.
- (4) A notice referred to in subsection (1) shall state -
- (a) the amount or rate of the road user charge imposed;
 - (b) the times when and the manner in which the road user charge shall be paid;
 - (c) the person who shall be liable for the payment of the road user charge;
 - (d) the person who shall be responsible for the collection of the road user charge;
 - (e) the penalty payable in the event of the late payment of the road user charge;
 - (f) subject to subsection (5), the circumstances and the manner in which exemption from the payment of any road user charge imposed under subsection (1)(d) may be granted, or a refund of an amount paid in respect of such charge may be made in respect of fuel sold for purposes other than on-road use;
 - (g) the measures to be applied where any person who is liable to pay the road user charge refuses or fails to pay that charge, including the creation of an offence punishable by way of a fine not exceeding N\$ 4 000 or imprisonment for a period not exceeding one year or both such fine and such imprisonment; and
 - (h) any other provision which the Administration may consider necessary for the efficient administration of the imposition, payment or collection of the road user charge or the efficient application of this subsection.
- (5) Any system relating to exemptions or refunds referred to in subsection (4)(f) shall be designed in concurrence with the Minister and the Ministers responsible for Transport and Energy and such exemption or refund shall only be granted to the extent that it is practicable and will not lead to evasion of the road user charge.
- (6) Subject to considerations of national security and such conditions as may be imposed by the President for the preservation of secrecy, every ministry, office or agency as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995) or any other agency of the Government of Namibia, shall provide the Administration with such information in its possession as may be reasonably required by the Administration for the purposes of determining any road user charge under subsection (1).
- (7) In the absence of an appropriate instrument or means for measuring the travelling distance of a motor vehicle for the purpose of calculation of the amount payable in respect of any road user charge, where applicable, the Administration may apply, in respect of any class of vehicle, any method which the Administration considers to be practical and fair for determining that distance.

- (8) For the purposes of this section -
- (a) “motor vehicle” means a motor vehicle as defined in section 1 of the Road Traffic and Transport Act, 1999; and
- (b) “on-road use” means the operation of a motor vehicle on a public road as defined in section 1 of that Act.

Determination of amount of funding

19.(1) In determining the amount of the funding to be made available through the road user charging system, the Administration shall -

- (a) ensure -
- (i) subject to section 17(2), the achievement of an economically efficient road sector; and
- (ii) compliance by the Roads Authority with the road standards and measures prescribed under section 16(5) of the Roads Authority Act; and
- (b) have regard to -
- (i) any moneys accruing to the Roads authority or any approved authority by virtue of an appropriation by Parliament, or any grant or donation made by any person, body or authority, in respect of any project or programme, or accruing from any other source other than under this Act; and
- (ii) the estimated value of any assets, equipment, human resources and other relevant resources which are or will in all probability be at the disposal of the Roads Authority or an approved authority,

which may effect the determination.

(2) The Administration shall, after compliance with such consultation procedures as may be determined by the Minister, frame the rules and principles which shall, for the purposes of the most effective achievement of the objects of subsection (1) in the utilization of the Fund, be applied and followed by the Roads Authority and every approved authority in proposing a new project or programme or an administrative expenditure referred to in section 20(4).

Funding of Roads Authority and approved authorities

20.(1) At least four months before the commencement of each financial year, the Roads Authority and every approved authority which requires funding from the Fund, shall submit to the Administration, in a form determined by the Administration, a budget in respect of the ensuing financial year and each of the four financial years following thereafter.

(2) A budget referred to in subsection (1), shall be prepared in accordance with the rules and principles referred to in section 19(2), and shall set out, in respect of each of the financial years, particulars of -

- (a) each new project or programme to be undertaken;
- (b) each project or programme to be continued from the previous financial year;
- (c) the estimated amount to be expended in respect of each project or programme referred to in paragraph (a) or (b);
- (d) the amount of any moneys, if any, which will be paid direct to the Roads Authority or approved authority by virtue of an appropriation made by Parliament or a grant or donation made by any person, body or authority in respect of any project or programme referred to in paragraph (a) or (b), or any other moneys that will accrue to the Roads Authority or approved authority from any

other source, or otherwise be at its disposal, and which will be applied for the purpose of any such project or programme;

- (e) the estimated value of any assets, equipment, human resources and other resources which will be available for use in connection with any such project or programme and which may affect the amount of funding required;
- (f) in the case of the Roads Authority, each item of its administrative expenditure which is not included in the expenditure relating to a project or programme referred to in paragraph (c); and
- (g) any additional information that may be required by the Administration.

(3) The Roads Authority and every approved authority shall, for the purposes of the preparation and submission of its budget in terms of subsection (1), consult with such parties as the Minister responsible for Transport may determine.

(4) The Administration shall, after evaluation of every budget submitted to it in terms of subsection (1) and after consultation with the Roads Authority and every approved authority concerned, and after evaluation of the Administration's own funding requirements -

- (a) determine, with due regard to the rules and principles contemplated in section 19(2) and the provisions of the procedures agreement contemplated in section 17 of the Roads Authority Act, the amount of funding to be made available in respect of every project or programme or administrative expenditure;
- (b) determine, with due regard to -
 - (i) the funds as contemplated in section 16(1) estimated to be at the disposal of the Fund, including the reserve fund contemplated in section 17(1)(k);
 - (ii) the avoidance of substantial increases in the rates of road user charges in any one year and, in the longer term, the maintenance of a reasonable stability, in real terms, in the rates of road user charges;
 - (iii) any moneys accruing to the Roads Authority or the approved authority concerned from any source other than under this Act in connection with any project or programme or its administrative expenditure and, to the extent that it may affect the making of an allocation, the value of any assets, equipment, human resources and other relevant resources which are or will in all probability be at its disposal; and
 - (iv) the amount required to fund each project or programme referred to in subsection (2)(b),

the manner in which the amount of funding referred to in paragraph (a) is to be allocated in respect of the ensuing financial year and each of the four financial years following thereafter.

(5) Any amount of funding due to the Roads Authority or any approved authority may be paid to it by the Administration in such instalments and subject to such conditions as the Administration may determine.

(6) Failure by the Roads Authority or any approved authority to comply with any provision of this section, except a failure to comply with the rules and principles contemplated in section 19(2), shall not prevent the Administration from making an allocation to it of such amount of funding as may, in the opinion of the Administration, be expedient in the circumstances and necessary for achieving the objects of this Act.

(7) The Minister shall, within three months after the commencement of this Act, make regulations in relation to the adjudication of disputes arising out of -

- (a) any determination made by the Administration in terms of subsection (4)(a) in respect of any type of expenditure contemplated in section 17(1)(a);
- (b) any refusal of the Administration to make a determination referred to in paragraph (a).

(8) Without prejudice to the generality of the power conferred by subsection (7), regulations made thereunder shall in particular provide for -

- (a) the constitution of an independent panel of experts to adjudicate disputes contemplated in that subsection;
- (b) the qualifications and conditions of appointment of the members of the panel;
- (c) the powers and duties of the panel; and
- (d) the procedures to be followed -
 - (i) by the complainant concerned in the submission of a dispute; and
 - (ii) by the panel in the adjudication of disputes.

(9) Regulations made under subsection (7) shall require that any adjudication of a dispute made under those regulations shall state the extent to which any determination referred to in paragraph (a) of that subsection or any refusal referred to in paragraph (b) of that subsection gives effect to section 19(1) and the rules and principles contemplated in section 19(2), including the extent to which such rule or principle concerned as such gives effect to section 19(1).

Business plan

21.(1) At least two months before the commencement of every financial year, the Administration shall prepare and adopt a business plan relating to the ensuing financial year and each of the four financial years following thereafter.

- (2) The business plan shall contain particulars and, where appropriate, include an analysis, regarding -
 - (a) the determinations made by the Administration under section 20(4) in respect of the ensuing financial year;
 - (b) any amount to be utilized in respect of any expenditure referred to in paragraphs (d), (f) and (g) of subsection (1) of section 17 which is derived by the Administration, the Roads Authority or any approved authority from any source other than the Fund;
 - (c) the estimated income accruing to the Fund in terms of section 16(1);
 - (d) the estimated administrative expenditure of the Administration;
 - (e) the proposed rates of road user charges;
 - (f) any factors which may affect the implementation of the plan concerned and the measures which will be taken to counter the effects of such factors; and
 - (g) such other matters as may be required by the Minister.

(3) The particulars which are included in a business plan in respect of the ensuing financial year in accordance with the provisions of paragraphs (a), (c) and (d) of subsection (2) shall constitute the approved budget of the Administration for that financial year.

(4) The Administration may from time to time during the course of a financial year, amend its business plan in order to accommodate a change in circumstances or any new considerations, but the Administration shall not amend an allocation made in the approved budget referred to in subsection (3) or introduce a new allocation in such budget, without due regard to the provisions of section 20(4) and unless the prescribed conditions and procedures have been complied with.

- (5) Before finalising any business plan or any amendment thereof, the Administration shall consult

with such parties as the Minister, in consultation with the Minister responsible for Transport, may determine, concerning the extent to which the plan gives effect to the achievement of an economically efficient road sector.

(6) The Administration shall make the business plan and every amendment thereof available for inspection at its office and shall cause it to be published, in such form as the Minister may determine, in at least two daily newspapers circulating nation-wide.

Performance statement

22.(1) Within two months after the transfer date or such longer period as the Minister may determine, the Administration shall, after consultation with such parties as the Minister may direct, prepare and submit to the Minister a draft performance statement containing such particulars as are necessary to enable the Minister to assess -

- (a) the strategies which the Administration intends to employ in order to achieve the objects of this Act, including -
 - (i) the projected funding requirements to be raised by it by way of road user charges in future; and
 - (ii) the types and rates of road user charges to be implemented by it in future;
- (b) the manner in which effect will be given to section 19 and the rules and principles referred to in subsection (2) of that section and the principles referred to in section 28(b);
- (c) the policies to be followed by the Administration in the making of investments and the borrowing of moneys;
- (d) the measures to be implemented by the Administration in order to protect the liquidity of the Fund;
- (e) the adequacy of the management and financial systems to be implemented by the Administration;
- (f) the principles which will be applied by the Administration in relation to its policies of appointment and promotion of staff of the Administration;
- (g) the principles which will be applied by the Administration in approving any person, body or authority under section 1(2); and
- (h) any other matter relating to the Administration's functions that 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 Administration.

(3) The performance statement -

- (a) may be amended by the Administration from time to time; and
- (b) shall be reviewed by the Administration and the Minister from time to time, but at least once every three years.

(4) The Administration shall make the performance statement and every amendment thereof available for inspection at its office and shall cause it to be published, in such form as the Minister may determine, in at least two daily newspapers circulating nation-wide.

PART IV FINANCIAL AND GENERAL PROVISIONS

Financial year

23. The financial year of the Administration shall be determined by the board.

Accounting and auditing

24.(1) The Administration shall -

- (a) keep, separately, such accounting records as are necessary to reflect fairly the state of affairs and business of the Administration and of the Fund and to explain the transactions and financial condition of the Administration and the Fund; and
- (b) cause separate financial statements to be prepared in respect of the Administration and the Fund.

(2) The accounting records and the financial statements 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 financial statements of the Administration and of the Fund 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 Administration in consultation with the Auditor-General.

Annual report

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

(2) The Administration's report shall contain -

- (a) particulars of projects and programmes relating to the management of the road user charging system;
- (b) an assessment by the Administration of its achievements in relation to its performance statement; and
- (d) such other matters as the Minister may require.

(3) 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 the Fund and the auditor's report on those statements.

(4) The Minister shall lay copies of -

- (a) the annual report referred to in subsection (1);
- (b) the financial statements and the auditor's report referred to in subsection (3);
- (c) the relevant performance statement and any amendment thereof, and
- (d) the business plan 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.

State land may be made available to the Administration

26. 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 Administration for the performance of the functions of the Administration.

Delegation of powers

27.(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, excluding the powers conferred by section 28;
- (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 Administration any power conferred upon it by this Act or delegated to it by the Minister; and
- (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 Administration any power conferred upon or delegated to the chief executive officer.

(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

28. The Minister, in consultation with the Minister responsible for Transport, and after consultation with the Administration, may make regulations in relation to -

- (a) any matter which in terms of this Act is required or permitted to be prescribed by regulation;
- (b) the principles to be applied by the Administration in the calculation and imposition of road user charges;
- (c) the collection of road user charges;
- (d) the manner in which the Administration may perform any function in terms of this Act;
- (e) the management and control of the Fund;
- (f) the procedures to be followed in connection with the lodging of complaints against the Administration which do not relate to disputes contemplated in subsection (7) of section 20; and
- (g) any other matter which the Minister considers necessary to give effect to the objects of this Act.

Transitional provisions

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

(2) The Minister, in consultation with the Minister responsible for Transport, and after consultation with the Administration, may -

- (a) subject to the consent of the creditor concerned and such conditions as the Minister and the creditor may agree upon, assign to the Administration, any obligation of the State arising out of an existing agreement between the State and such creditor in connection with any loan obtained by the State before the commencement of this Act for any purpose related to the management of the national road network;
- (b) subject to the consent of the donor concerned and such conditions as the Minister and the donor may agree upon, assign to the Administration, any obligation of the State arising out of any existing conditions stipulated by such donor in connection with any donation or grant made to the State before the commencement of this Act for any purpose related to the management of the national road network.

(3) Notwithstanding any law to the contrary, the Administration 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 subsections (1) and (2).

(4) A certificate issued by the Minister responsible for Transport 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 Administration in terms of subsection (1), shall be sufficient proof that the asset or right so described vests in the Administration.

(5) Upon the submission of the certificate referred to in subsection (4) to the Registrar of Deeds or to any other person in charge of any other office where a register or a record is being kept of the ownership of or entitlement to an asset or right described in such certificate, 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 Administration.

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

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

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

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

(10) Notwithstanding any provision to the contrary contained in any other law, the Minister may, in consultation with the Prime Minister and in accordance with the provisions of an agreement concluded with the Administration, transfer to the Administration any staff member, but subject to the consent of the staff member concerned.

(11) Until the date determined as the transfer date in respect of the Roads Authority under section 27(1) of the Roads Authority Act, any reference in this Act to the Roads Authority shall be construed, except if it is obviously inappropriate, as a reference to the Department of Transport in the Ministry responsible for Transport.

(12) Notwithstanding the provisions of this Act, the Minister, in consultation with the Minister responsible for transport, shall, for the purposes of the more effective bringing into operation of its provisions, and until such time as the board has been constituted under section 4 -

- (a) exercise the powers under sections 1(2) and 19; and
- (b) prepare, after consultation with any interested parties as the Minister considers fit, the first business plan contemplated in section 21.

Short title and commencement

30.(1) This Act shall be called the Road Fund Administration 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.

(3) Any reference in any provision of this Act to the commencement of this Act shall be construed as a reference to the date determined under subsection (2) in relation to such provision.

Act No. 18, 1999 Road Fund Administration Act, 1999 Government Gazette No. 2217, 22 October 1999

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