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1996-03-31
Third version

A PROPOSAL FOR RESTRUCTURING OF THE NAMIBIAN ROAD SECTOR

1. INTRODUCTION AND BACKGROUND

There are two starting points for the proposal presented in this paper, viz. (i) the decision by Cabinet on the introduction of road user charging in Namibia; and (ii) the restructuring of the Ministry of Works, Transport and Communication under the ongoing MWTC2000 project.

At its meeting on 25 July 1995, Cabinet decided, *inter alia*, that

- a system of road user charging for Namibia be implemented
- that the road user charges should be set so as to recover the full cost of providing and maintaining roads and streets which can be economically justified
- the costs of roads built for social purposes need not be fully devolved on road users and that the portion of the costs of such projects which cannot be justified from a traffic point of view be budgeted by Government
- charges should be equitable and set to promote the efficient utilisation of resources
- a dedicated road fund be established into which road user charges will be paid
- the said fund will be administered by a National Roads Board under the Ministry of

Finance

- the system of subsidies to local authorities for maintaining urban roads be reformed so as to form part of the road user charging system.

The purpose of the MWTC2000 project, which received support from a Cabinet decision on 25 July, 1995, is to improve the efficiency in the Ministry by transferring out all those activities in the Ministry, which are essentially operational in nature, thereby continuing a policy initiated in 1991 through the establishment of Namibia Post Ltd and Telecom Namibia Ltd.

One activity initiated under the MWTC2000 project is the assessment of the future of the heavy plant now operated by the Division Plant and Equipment. A first phase report by consultants concluded that it would not be possible to commercialise this division on a stand-alone basis. In order to create a viable operation the report argued that it would likely be necessary to combine the heavy plant and equipment with those units in the Directorate: Transportation Infrastructure Maintenance and Construction (DTIMC), that are now involved in construction and maintenance activities, in order to create a full-scale roads contractor. It was therefore recommended that the further scope of work concerning the heavy plant be

widened to also include these other units of DTIMC. At its meeting on 12 December, 1995, Cabinet accepted these recommendations.

The MWTC has as yet not taken any further actions on the basis of these decisions by Cabinet. The reason is the question what to do with the remaining functions now performed by the Ministry in the roads sector, i.e., road planning, road design, contracting and supervision of road contractors. These functions are currently performed by divisions in the Directorate: Planning and Transportation Management (DPTM) and DTIMC. In terms of the project description for MWTC2000 it is envisaged that also these operational functions would be organised autonomously from the Ministry in the future.

The purpose of this paper is now to make a comprehensive proposal for the arrangements in the road sector in the future, including planning, contracting, maintenance and construction, and funding. It is to be emphasised that the author alone is responsible for the proposals made; they have as yet not been discussed and considered within the Ministry or in other parts of the Government.

When drafting this proposal the principles of the cabinet submission *Introduction of a System of Road User Charging in Namibia*, signed 18 July 1995, has been taken into account. It is believed that the proposal presented here in essence is in conformity with these principles. There are, however, some deviations, as spelled out and explained below. Also the role of the Road Fund is seen in a somewhat different perspective than in the said cabinet submission, which does not necessarily change the actual functions envisaged for the Fund but clarifies its role.

The main source of inspiration for the proposal made is the current arrangements in New Zealand, the only country in the world operating a fully self-financed road system through a road fund and relying on an autonomous agency of the state to manage the state roads, Transit New Zealand. The New Zealand approach was recently developed further in a proposal submitted to the Government of Zimbabwe. The proposal made in this paper is similar to the one made for Zimbabwe. It takes into account various issues that have been identified in research done by the World Bank and Sida, and reflected in other literature of relevance; the reader is referred to a list of references which is attached.

2. THE BASIC IDEAS

A number of functions have to be performed for there to be an operational road sector. These are broadly speaking (i) ensuring road safety; (ii) controlling against overloading; (iii) setting standards for construction and maintenance; (iv) planning road maintenance and construction to achieve efficient use of resources; (v) planning road maintenance and construction to ensure adequate level of accessibility (provision of roads for social purposes); (vi) contracting for the construction and building of roads; (vii) constructing and maintaining roads; (viii) supervising the construction and building of roads; (ix) mobilising financing; (x) setting levels of road taxes and/or road user charges; (xi) performing economic regulation to prevent exploitation of market power; and (xii) enforcing accountability.

With the exception of road construction (partially), all these functions were traditionally performed by the core government (ministries and cabinet). The decisions already taken by Cabinet means that some of the above functions will be performed by organisations which are not part of the core government. The intention is now to make a comprehensive proposal for how these functions should be performed in a reformed arrangement for the road sector.

In doing that, there are three important aspects to bear in mind:

- (a) roads are natural monopolies
- (b) the production of a road service involves both a road and a road user. The implication of this is that efficiency entails the overall minimisation of the sum of road costs and road user costs.
- (c) accessibility is an important concern. Roads are not only built for efficiency purposes. They are also provided in order to ensure basic accessibility, e.g. to social services and education, or simply to ensure the cohesion and integrity of a country.

The basic proposal of this paper is that the afore-mentioned functions should be assigned to the following organisations:

- The manager of the state roads. This organisation is henceforth referred to as the National Road Administration of Namibia or in short NamRoad. It would be an autonomous state agency accountable to the Minister of Works, Transport and Communication and responsible for planning, and arrange for the maintenance and construction of state roads. Its objective would be 'efficiency'. It would handle functions (iv), (vi) and (viii). It is envisaged that NamRoad would not require more than 200 employees, all inclusive.
- The economic regulator of the roads sector. This corresponds to what in the Cabinet decision is called the National Roads Board of Namibia, which however here will be referred to as the Road Fund Administration of Namibia in the sequel, or in short NamFund¹. NamFund would be responsible for protecting the viability (solvency) of the road fund, setting road user charges and ensuring that NamRoad meets its basic objective of managing the road sector in terms of the efficiency criterion. It would be an autonomous state agency accountable to the Minister of Finance. It would handle functions (ix), (x), (xi) and (xii) (partly). NamFund would likely not require more than, say 3, permanent employees.

¹ The reason for this proposal is that the wording 'Roads Board' associate to the current roads boards established in terms of the Roads Ordinance, 1972, which are involved in the planning and management of roads, not in their financing or regulation of road user charges. This wording is also used in other English-speaking country to denote organisations similarly involved in the roads sector. To avoid confusion it is proposed that the name be changed to clearly indicate the role of the organisation.

- The Minister of Works, Transport and Communication would be responsible for ensuring safety standards, setting minimum standards for the construction and maintenance of roads, and plan for accessibility. The Minister would therefore be responsible for quality and safety regulation, and would also be responsible for ensuring that the road network provides an acceptable level of accessibility. The Minister would thus be responsible for functions (i), (iii), (v), and for mobilising finance for constructing roads required to meet accessibility - or social - needs (ix). The overload control function (ii) should in principle rest with the Minister, but should be delegated to the manager, NamRoad, to actually carry out. The Minister, finally, has a primary responsibility for ensuring that NamRoad is accountable.
- The Minister of Finance is responsible for ensuring that NamFund is accountable; function (xii). He will in addition issue regulations setting out the principles for how to set road user charges and for how to manage the funds in the road fund.
- The road contractors. These would contract with NamRoad to undertake road construction and road maintenance, function (vii). One or possibly several of these would emanate from the envisaged restructuring of DTIMC.
- The stakeholders would have no direct role, but it would be necessary for both NamRoad and NamFund to consult with road users. The road users would be given a voice both to express views, but they would also be encouraged to undertake their own monitoring of NamRoad and NamFund; function (xii).

In addition, it should be mentioned that the local authorities would be responsible for their own roads, although it would be possible for them to contract with e.g. the Association of Local Authorities and/or NamRoad to act as their agent.

The Road Fund would fund (i) all economically justified road projects for expanding/upgrading the state road network; (ii) the maintenance of all state roads; and (iii) traffic related maintenance of roads and streets under the control of local administrations. These administrations would, however, remain being responsible for the financing of investments in urban roads and streets, while the Government would be able to fully or partially fund state roads which are socially justified, and then use NamRoad as an agent for executing these works.

The basic duality approach of this model is seen as a key feature to enable both NamRoad and NamFund to operate on an autonomous basis. NamFund acts as the main check on the behaviour of NamRoad to ensure that it does not 'overspend' and become 'too ambitious'. The mechanism to be used to this effect is basically the following. Firstly, NamRoad has to develop a methodology to be used to determine 'efficient' investments and road maintenance actions, and NamFund is then expected to approve these principles before they are applied. Secondly, NamRoad then applies these principles when preparing annual plans and five-year plans, which are to be submitted to NamFund. If NamFund finds that the principles have been applied in an appropriate way, then NamFund makes available the money required for the execution of the works during the next year.

NamFund also determines the actual levels of road user charges, but in terms of well-defined principles laid down by the Government to ensure that they are always 'efficient' and 'equitable', and so as to ensure the long-term viability of the Road Fund. The requirement that the road user charges have to be set in terms of clear principles and at such a level that the costs of roads will be covered in the long run is the instrument to ensure that there be no exploitation of market power.

The proposal that the board of NamFund should actually have the power to appropriate the money from the road fund is likely to go beyond what was envisaged in the afore-mentioned cabinet submission. However, given that Cabinet has decided that (i) there should be road user charges and a road fund; and (ii) that the road sector should be managed in terms of a clear - and measurable - criterion, viz. efficiency, then it has, in effect, provided a complete framework for delegation. The implication of these decisions is the delegation of authority to spend to the board of the road fund.

Further checks on this structure are provided by some important powers to be vested in the Minister of Works, Transport and Communication. This Minister should (i) define the state road network through the instrument of proclaiming roads, which will identify the area of responsibility for NamRoad; (ii) establish minimum road maintenance standards, and for different types of road, that NamRoad must abide by, to ensure that e.g. minor roads in distant parts of the country are not neglected²; and (iii) establish road construction standards for different types of roads to ensure that e.g. particular types of road users are not disadvantaged. The role of the Minister is thus, *inter alia*, to ensure that NamRoad does not 'underspend' by becoming 'too unambitious' and to ensure that the maintenance of no part of the state road network is neglected thereby possibly jeopardizing the aim of providing an acceptable level of accessibility.

Another important check is the consultation mechanism. Both NamFund and NamRoad would be required to consult with road users and other stakeholders before they decide on new road plans, new level of road users, etc. And both these organisations would have to document the contents and results of this consultation process, which would have to be made available to the public. In addition, when evaluating the performance of NamRoad and NamFund, the Ministers of Works, Transport and Communication and Finance, respectively, would have to take into account comments submitted by road users.

On the other hand, it is not envisaged that the stakeholders would be directly involved in NamFund or NamFund, as suggested in the document prepared by the Interministerial Committee of Technical Experts on Road User Charging. These organisations would both have their own boards, but the members of these boards should be recruited purely in terms of the proposed members' ability to understand the objectives of these organisations and capability to effectively contribute thereto. It is suggested here that it would be detrimental to

² It is envisaged that 'accessibility' would only be a relevant concern when determining maintenance standards for minor (or tertiary) roads. For primary and secondary roads the Minister would thus only be able to set standards - for maintenance and construction - for example to ensure road safety and compliance with international agreements.

have positions on the boards earmarked for stakeholders as it could easily lead to the undermining of the viability of NamFund and NamRoad. These agencies must derive their strength from boards that develop a unified approach to their organisations' tasks. If stakeholders are given earmarked representation they may pursue their own conflicting interests.

It should also be mentioned that the basic ideas presented here appear to deviate in one further respect from the principles set out in the afore-mentioned cabinet submission. In terms of that submission, revenues from road user charges should only be spent on economically justified roads. This may mean that the maintenance of some smaller roads that are now part of the proclaimed road network would not receive funding from the Road Fund, because the traffic may be too small to justify maintenance activities. The implication of the proposal in the cabinet submission is that the maintenance of such roads should be maintained by appropriating funds from the Central Revenue Fund.

This approach is questionable for several reasons. The most important is, however, that as what should be viewed as 'economically justified maintenance' cannot be determined in a fully objective way, there is a risk that this approach may give rise to conflicts, e.g. between NamRoad and the Ministry of Works, Transport and Communication, which could jeopardise the autonomy of NamRoad. It is argued here that it would be much easier to handle the matter by vesting the power of defining the state road network in the Minister, as well as the minimum maintenance standards for different types of roads, and then require that all these roads be maintained by NamRoad and with funds from the road fund. In this way the accessibility requirement can be met, presumably at not a substantial cost to the Road Fund.

On the other hand, in terms of the proposal made here, when constructing new roads which are not economically justified, the additional costs required in order to justify these roads should be borne by the public.

The creation of NamRoad implies that it will take over functions now performed by the Ministry of Works, Transport and Communication. It will be necessary for this Ministry to retain some staff for planning purposes also in the future. These would be required to (i) decide on standards for construction and maintenance to enable the Minister to exercise his/her powers; and (ii) prepare road projects - required for social reasons - up to and including the level of preliminary design. It is envisaged that the Ministry would retain a professional staff for this purposes of about 5-10 persons.

3. THE ROAD FUND ADMINISTRATION OF NAMIBIA (NAMFUND)

This section sets out the basic operational principles envisaged for the Road Fund (further details are in Appendix 1). It is assumed that the Road Fund of Namibia would be managed by a separate organisation to be named the Road Fund Administration of Namibia (NamFund).

NamFund would be an agency of the state and a corporate body, that could sue and be sued, and could acquire, hold title to and dispose of property. It would only have the powers vested in it in terms of an act of Parliament, or which could be assigned to it by the Minister of Finance, in terms of an act of Parliament. NamFund would be responsible to the Minister of Finance for meeting its financial and management reporting obligations.

The principal objectives of NamFund would be to

- (i) manage the Road Fund of Namibia to ensure that adequate resources are available to finance the public road network of Namibia, while ensuring the lowest possible road user charges which are compatible with the long-term viability of the Fund at reasonably stable levels of charges;
- (ii) set road user charges which promote efficiency in the use of the road network and equity between road users. An act of Parliament would define road user charges, and NamFund would propose policies for the setting of road user charges, to be approved by government³; and
- (iii) allocate moneys from the Road Fund to NamRoad which would ensure the preservation of the state road network at acceptable standard and at minimum cost.
- (iv) allocate moneys from the Road Fund to local road authorities which would ensure the preservation of their declared roads at acceptable standard and at minimum cost.

The financing by the Road Fund of maintenance activities for declared roads under local road authorities, will be subject to (i) these roads meeting specified minimum standards (e.g. level of traffic, that the road fulfills a public function and is built to and maintained to a minimum level of technical standard); and (ii) to a ceiling on the contribution for different types of activities for different types of roads, according to set standards. The standards would be developed by the Minister of Transport, in consultation with NamRoad and the local road authorities. NamFund would be responsible for establishing principles for how to determine the ceiling on the level of contributions, and these principles would have to be accepted by government.

Each year, NamFund will prepare a One-Year Programme, an Indicative Five-Year

³ It is envisaged that these policies would primarily concern how to cover so-called residual costs, i.e. those costs which do not vary with road use and type of vehicle.

Programme and a Performance Statement. The preparation of these documents will be initiated by advising NamRoad and local authorities about what levels of spending on maintenance and investments that are compatible with the long-term viability of the Fund, and without having to implement drastic changes in the level of road user charges. NamFund will then prepare its Programmes and Performance Statement on the basis of (i) the submission of a draft one-year and a draft indicative five-year programme from NamRoad; and (ii) the submission by NamRoad or the Association of Local Authorities (as an agent in this regard acting on behalf of the local road authorities) of estimates of required amounts of money to be paid out of the Road Fund for the next year to maintain declared roads under the local authorities, which meet set standards, and after having taken into account the ceiling on the contribution to different types of roads.

NamFund will not accept these draft programmes from NamRoad until it is satisfied that the demands for funds from NamRoad and local authorities are compatible with the overall objectives of ensuring the long-term viability of the Fund, at reasonably stable road user charges, and of promoting an efficient use of resources. If NamRoad's draft programmes are not accepted, they are to be returned to NamRoad for reconsideration; NamFund hence has the power to authorise moneys to be spent from the Road Fund, subject to that the demands by NamRoad and local authorities are compatible with the basic objectives of NamFund and NamRoad.

NamFund will submit its documents to the Minister of Finance, at the same time as NamRoad submits its corresponding documents to the Minister of Works, Transport and Communication. The One-Year Programme will set out (i) the road user charges for the coming year; (ii) the amount of money to be transferred to the local authorities; (iii) the amount of money to be transferred to NamRoad; and (iv) the position of the Road Fund at the beginning and at the end of the year. The Indicative Five-Year Programme will contain similar information. The Performance Statement will, *inter alia*, contain indicators to allow for an evaluation of NamFund's ability to forecast revenues and to assess the long-term viability of the Fund.

The three documents will be laid before Parliament by the Minister of Finance (for information purposes).

The Performance Statement would only be recorded. It would be used to monitor performance of NamFund by the Minister of Finance and the Auditor General, and would contain the following information:

- (i) the basis for recommending new levels for road user charges;
- (ii) the basis for determining the allocation of moneys to the local road authorities;
- (iii) the measures by which the performance of NamFund can be judged;
- (iv) the basis for recommending that loans be taken up for the financing of

investments in State Roads;

(v) the management and financial systems under which NamFund will undertake its functions; and

(vi) risks associated with the recommended One-Year and Indicative Five-Year Programmes, and recommended risk mitigating actions to be taken by NamFund and the government in this regard.

The affairs of NamFund would be managed by a board of directors, with not less than 3 and not more than 4 members. Directors would possess an understanding of and have expertise in such matters as would ensure the achievement of the objectives of NamFund. Persons whose interest or duty would be in conflict with the duty of a director would not be eligible for appointment to or for retaining membership of the board.

NamFund would have the power to (i) establish and staff an appropriate organization; (ii) appoint staff and determine their terms and conditions of employment; and (iii) enter into contract with private or legal persons for the execution of any of its functions. In exercising its functions and powers, NamFund would consult with NamRoad, relevant local authorities and road users before submitting any proposals for a one-year and a five-year programme. NamFund would also comply with any lawful direction in writing from the Minister of Finance which is not in contradiction with the objectives, duties, powers and functions of NamFund, subject to the condition that a copy of such a direction should lay before parliament and be published in the *Government Gazette*.

NamFund would prepare an annual report comprising

(a) a statement of the activities of the year;

(b) financial statements for the Road Fund, with an audit opinion by the Auditor General; and

(c) A statement of service performance with regard to the Performance Statement, including an audit opinion by the Auditor General.

5. THE NATIONAL ROAD ADMINISTRATION OF NAMIBIA (NAMROAD)

This section sets out the operational framework of NamRoad. Further details are in Appendix 2.

NamRoad is an agency of the state. It is a corporate body, which can sue and be sued, and which can acquire, hold title to and dispose of property. It only has the powers which are vested in it in terms of an act of Parliament, or which can be assigned to it by the Minister of Works, Transport and Communication, in terms of an act of Parliament. NamRoad shall be responsible to the Minister of Works, Transport and Communication for meeting its financial

and management reporting obligations.

NamRoad will operate through two sources of funds. Firstly through appropriations from a dedicated road fund, as authorised by the board of NamFund (Appendix 1) through approval of (i) a One-Year Programme; and (ii) an Indicative Five-Year Programme, which both will comprise three components: (a) construction of state roads; (b) maintenance of state roads; and (c) the NamRoad administration. The One-Year Programme will set out the total maximum amount of moneys to be spent for each of the components. The purpose of the Indicative Five-Year Programme is to allow NamFund to authorise the minimum amount of money that can be spent in the coming five years. This minimum amount of money will be tied to the authorised amount of money to be spent (in real terms) for each one of the components in terms of the One-Year Programme, e.g. (a) 95% of authorised maximum expenditure for (i) maintenance; and (ii) the NamRoad Administration; and (b) 100% of estimated future costs during each year of implementation for approved construction projects. As part of each One-Year Programme, NamFund will also approve new construction projects.

Secondly, NamRoad will undertake to construct state roads which Parliament decides should be built although, NamRoad and NamFund in terms of their respective objectives conclude that they are not justified, or that they should only be built at a later time. In the first instance, the full cost of the road will be financed through appropriations from the Central Revenue Fund. In the latter case, Parliament will make available the funds required at the desired time of construction, and these will then be paid back to the Central Revenue Fund by NamFund at the time when it would have been appropriate to build the roads as judged by NamRoad/NamFund. The initial planning (up to and including preliminary design) of roads to be financed by appropriations from the Central Revenue Fund is the responsibility of the Ministry of Works, Transport and Communication. The maintenance of such roads, once constructed, is at all times the responsibility of NamRoad, and with financing from NamFund.

The principal objective of NamRoad shall be to manage the state road network so that it generates maximum national economic benefits.

The affairs of NamRoad shall be managed by a board of directors. The board shall appoint the general manager of NamRoad, who shall not be a member of the board. The terms and conditions of employment of the general manager shall be determined by the board.

The functions of NamRoad are, *inter alia*, to:

- (a) manage the state road network, including planning, design, supervision, construction and maintenance in accordance with (i) authorised plans; and (ii) construction and maintenance standards set by the Minister of Works, Transport and Communication; and
- (b) implement additional investment programmes as decided on by Parliament, and in terms of an agreement between the Ministry of Works, Transport and Communication and NamRoad/NamFund.

In exercising its functions and powers, NamRoad shall, *inter alia*:

- (a) consult with relevant local authorities and road users before submitting any requests to NamFund;
- (b) operate its administration, and undertake maintenance and construction activities in the most cost-effective way possible, having regard to its principal objective. To this end NamRoad shall (i) engage agents (road contractors) for performing maintenance and constructing activities, normally through a competitive tendering procedure to be approved by its board; and, (ii) if found cost-effective, engage consultants for the preparation of feasibility studies, preparation of detailed design, preparation of annual maintenance programmes and for undertaking supervision of maintenance and construction works, through a competitive tendering procedure to be approved by its board.

Based on guidelines issued by NamFund, NamRoad shall prepare each year (i) a One-Year Programme; (ii) an Indicative Five-Year Programme; and (iii) a Performance Statement, which after been authorised by NamFund shall be submitted jointly to the Minister of Works, Transport and Communication not later than xx. The Programmes and Performance Statement shall be prepared taking into account (already) approved (i) maintenance and construction standards; (ii) construction projects; and (iii) indicative five-year programmes. Additionally, the Programmes and Performance Statement shall be prepared by taking into account guidelines issued by the Minister of Works, Transport and Communication with regard to measures to judge the performance of NamRoad.

The recommended Programmes and the Performance Statement, including the guidelines issued by the Minister, are to be made public by laying them before Parliament.

NamRoad shall prepare an annual report which shall comprise

- (a) a statement of the activities of the year;
- (b) financial statements, with an audit opinion by the Auditor General
- (c) a statement of service performance with regard to the Performance Statement, including an audit opinion by the Auditor General.

6. CONCLUDING WORDS

The proposal made in this paper differs from the New Zealand model in one important respect. In New Zealand, the Ministers of Finance and Transport jointly decide on an annual programme, while the level of road user charges effectively are set by the Cabinet. There is hence no regulator in the New Zealand model, as also reflected in that there is no administration associated with the road fund. Recommendations for new road user charges actually emanate from the manager, i.e., Transit New Zealand. One disadvantage of this

approach is that inadequate funds are being generated for the road fund. The New Zealand government has thus often been opposed to increasing road user charges since it has been seen as being in conflict with targets for price inflation. Another drawback is that the road user charges are not being set in terms of clearly laid down principles, and a third problem is that appropriations are basically only for one year at a time, which makes longer term planning difficult.

It is argued here that these problems can be solved by explicitly identifying the role of the regulator in the form of the Road Fund Administration. It is this organisation which is responsible for making sure that adequate money is available, both in the short and long run, and that the charges are set according to clear and generally accepted principles.

Also to be mentioned is that the approach of this paper in a number of respects differs from the model pushed by the World Bank in Africa. The most important of these is that it is argued here that seats on the boards of NamFund and NamRoad should not be earmarked for specific interests, in the form of stakeholders. The board members must above all be loyal to the basic objectives of these organisations, and nothing else. This, of course, does not rule out that a board member in his normal daily activities actually represents or comes from a stakeholder. The important requirement is rather that he/she should work in the interest of NamFund/NamRoad while sitting on their boards, and not in the interest of the stakeholder.

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THE ROAD FUND ADMINISTRATION OF NAMIBIA (NAMFUND)

1. General

NamFund is an agency of the state. It is a corporate body, which can sue and be sued, and which can acquire, hold title to and dispose of property. It only has the powers which are vested in it in terms of an act of Parliament, or which can be assigned to it by the Minister of Finance, in terms of an act of Parliament. NamFund shall be responsible to the Minister of Finance for meeting its financial and management reporting obligations.

NamFund will manage the Road Fund of Namibia. It will in addition set road user charges and establish principles for how to allocate Road Fund revenues to (i) NamRoad and (ii) local road authorities to be spent on traffic related road maintenance. An act of Parliament will define road user charges and basic policies for their setting. NamFund shall propose more detailed policies for the setting of road user charges, to be approved by government.

The Road Fund will finance all maintenance activities of and all investments in the state roads (proclaimed roads that are not the responsibility of an local authority) that are compatible with the principal objective of NamRoad. Other investments in the state road network will be financed through grants from the Central Revenue Fund of Namibia (see further Appendix 2). The Road Fund will furthermore finance the maintenance activities of declared roads under local road authorities, subject to these roads meeting specified minimum standards (e.g. level of traffic, that the road fulfills a public function and is built to and maintained to a minimum level of technical standard) and subject to a ceiling on the contribution for different types of activities for different types of roads, according to set standards. The standards are to be developed by the Minister of Works, Transport, and Communication in consultation with NamRoad and the local road authorities. NamFund will be responsible for establishing principles for how to determine the ceiling on the level of contributions, and these principles will have to be accepted by government.

The Road Fund will not be able to finance any other activities (except as set out in an act of Parliament), with the exception of the cost of operating NamFund itself.

Each year, NamFund will prepare a One-Year Programme, an Indicative Five-Year Programme and a Performance Statement. The preparation of these documents will be initiated by advising NamRoad and local authorities about what would be prudent levels of spending on maintenance and investments in order to ensure the long-term viability of the Fund, and without having to implement drastic changes in the level of road user charges. NamFund will then prepare its Programmes and Performance Statement on the basis of (i)

the submission of a draft one-year and a draft indicative five-year programme from NamRoad; and (ii) the submission by NamRoad or the Association of Local Authorities (as an agent in this regard acting on behalf of the local road authorities) of estimates of required amounts of money to be paid out of the Road Fund for the next year to maintain declared roads under the local authorities, which meet set standards, and after having taken into account the ceiling on the contribution to different types of roads.

NamFund will not accept these draft programmes from NamRoad until it is satisfied that the demands for funds from NamRoad and local authorities are compatible with the overall objectives of ensuring the long-term viability of the Fund, at reasonably stable road user charges and of contributing to an efficient use of resources. If NamRoad's draft programmes are not accepted, they are to be returned to NamRoad for reconsideration; NamFund hence has the power to authorise moneys to be spent from the Road Fund, subject to that the demands of NamRoad and local authorities are compatible with the basic objectives of NamFund and NamRoad.

NamFund will submit its documents to the Minister of Finance, at the same time as NamRoad submits its corresponding documents to the Minister of Works, Transport and Communication. The One-Year Programme will set out (i) the road user charges for the coming year; (ii) the amount of money to be transferred to the local authorities; (iii) the amount of money to be transferred to NamRoad; and (iv) the position of the Road Fund at the beginning and at the end of the year. The Indicative Five-Year Programme will contain similar information. The Performance Statement will, *inter alia*, contain indicators to allow for an evaluation of NamFund's ability to forecast revenues and to assess the long-term viability of the Fund.

The three documents will be laid before Parliament by the Minister of Finance.

The Performance Statement will only be recorded. It will be used to monitor performance of NamFund by the Minister of Finance and the Auditor General.

2. The Principal Objectives

The principal objectives of NamFund shall be to

- (i) manage the Road Fund of Namibia to ensure that adequate resources are available to finance the public road network of Namibia, while ensuring the lowest possible road user charges which are compatible with the long-term viability of the Fund at reasonably stable levels of charges;
- (ii) set road user charges which promote efficiency in the use of the road network and equity between road users;

(iii) allocate moneys from the Road Fund to NamRoad which would ensure the preservation of the state road network at acceptable standard and at minimum cost.

(iv) allocate moneys from the Road Fund to local road authorities which would ensure the preservation of their declared roads at acceptable standard and at minimum cost.

3. The Board of Directors

The affairs of NamFund shall be managed by a board of directors, which shall have not less than 3 and not more than 4 members. Directors shall be appointed for a period of 3 years by the Minister of Finance in Cabinet. Directors can be reappointed for one further 3-year period.

Directors shall possess an understanding of and have expertise in such matters as will ensure the achievement of the objectives of NamFund.

Persons whose interest or duty would be in conflict with the duty of a director would not be eligible for appointment to or for retaining membership of the board. (This means that e.g. persons who (i) are in the employ or on the Board of NamRoad or in similar position in a local road authority or administration; or (ii) in their capacity as civil servants have to deal directly or indirectly with NamFund; or (iii) in their capacity as political office bearers would be able to take decisions which directly or indirectly affect NamFund; or (iv) represent road users, would not be eligible for appointment.)

Any member may at any time be removed from office by the Minister of Finance in Cabinet for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Minister.

The board shall appoint the General Manager of NamFund, who shall not be a member of the board. The terms and conditions of employment of the General Manager shall be determined by the board.

4. Functions

The functions of NamFund are to:

- (a) manage the Road Fund of Namibia;
- (b) recommend detailed policies to government for the setting of road user charges;
- (c) set levels on road user charges in terms of accepted policies, and organise the collection of revenues from these charges and their deposition into the Road Fund Account (it is envisaged that NamRoad will undertake the actual collection of road user charges);
- (d) recommend policies to government for how to allocate moneys from the Road Fund to

local road authorities for the maintenance of their roads, and implement accepted such policies;

(e) recommend policies to government on borrowing in order to finance investments in the state road network, and implement accepted such policies;

(g) determine (i) levels of funds to be made available to NamRoad; (ii) levels of funds to be made available to local road authorities; and (iii) expenditure on the NamFund administration for the next financial year and for each year of the next five years through a One-Year and an Indicative Five-Year Programme;

(f) implement One-Year and Indicative Five-Year Programmes; and

(i) follow and support research and development of relevance to the functions of NamFund.

5. Powers

NamFund will have the power to:

(a) set road user charges, in terms of policies approved by government, to be deposited into the Road Fund Account;

(b) establish, maintain and operate one or several bank accounts (the NamFund Account (note this is NamFund's own account));

(c) make payments from the NamFund Account as authorised by the enabling act;

(d) invest moneys in the Road Fund Account and the NamFund Account in accordance with appropriate and established regulations or in accordance with procedures approved by the Minister of Finance:

(e) borrow money and issue guarantees or indemnities in accordance with appropriate established regulations or with procedures approved by the Minister of Finance or as approved from time to time by government;

(f) establish and staff an appropriate organization;

(g) appoint staff and determine their terms and conditions of employment;

(h) fire staff in terms of applicable (private sector) labour laws;

(i) engage external auditors to prepare audits, as approved by the Auditor General;

(j) enter into contract with private or legal persons for the execution of any of its

functions;

6. Duties

In exercising its functions and powers, NamFund shall

- (a) ensure that the policy objectives of the government with regards to roads and road user charges are achieved;
- (b) consult with NamRoad, relevant local authorities and road users before submitting any proposals for a One-Year and an Indicative Five-Year Programme;
- (c) operate its administration, and undertake its functions in the most cost-effective way possible, having regard to its principal objectives.
- (d) formulate, publish and implement tendering procedures and policies for procurement of consulting services and other services required for its operations;
- (e) formulate and implement a human resources policy which shall promote equal opportunities and the development and encouragement of all irrespective of race, creed and sex; and
- (f) operate financial management and accounting systems in accordance with generally accepted accounting procedures.

7. Preparation of Programmes and Performance Statement

Each year NamFund shall prepare (i) a One-Year Programme; (ii) an Indicative Five-Year Programme; and (iii) a Performance Statement, which shall be submitted jointly to the Minister of Finance not later than xx. The Programmes and Performance Statement shall be prepared taking into account approved (i) policies on the setting or road user charges; (ii) principles for allocating moneys to local road authorities for the maintenance of their roads; and (iii) five-year programmes.

The Programmes and Performance Statement shall further be prepared by taking into account guidelines issued by the Minister of Finance with regard to (i) borrowing of money for the financing of investments in State Roads; (ii) measures to judge the performance of NamFund; and (iii) future levels of road user charges.

The Performance Statement shall include the following:

- (i) the basis for setting new levels for road user charges;
- (ii) the basis for determining the allocation of moneys to NamRoad and the local road

authorities;

- (iii) the measures by which the performance of NamFund can be judged;
- (iv) the basis for determining that loans are to be taken up for the financing of investments in State Roads;
- (v) the management and financial systems under which NamFund will undertake its functions; and
- (vi) risks associated with the recommended One-Year and Five-Year Programmes, and recommended risk mitigating actions to be taken by NamFund and the government in this regard.

The recommended Programmes and the Performance Statement, including the guidelines issued by the Minister, are to be made public by laying them before parliament.

8. Directives by the Minister

NamFund shall comply with any lawful direction in writing of the Minister of Finance which is not in contradiction with the objectives, duties, powers and functions of NamFund, subject to the condition that a copy of such a direction shall lay before parliament and shall be published in the *Government Gazette*.

9. Financial Provisions

All revenues from road user charges will be deposited into the Road Fund Account, which shall be a separate account of the Namibia Government.

Payments from the Road Fund Account shall only be made in terms of regulations issued by the Minister of Finance.

Borrowing of short term and long term funds shall only be made in terms of regulations issued by the Minister of Finance, and/or as approved from time to time by the Government.

NamFund and NamRoad shall agree on the manner in which during each financial year authorised funds for construction, maintenance and the NamRoad administration shall be transferred to the NamRoad Account. NamFund and local road authorities shall agree on the manner in which during each financial year authorised funds for maintenance shall be transferred to authorised accounts of these local road authorities.

10. Reporting and Auditing

NamFund shall prepare quarterly financial and performance reports to be submitted to the Minister of Finance.

NamFund shall prepare an annual report which shall comprise

- (a) a statement of the activities of the year;
- (b) financial statements for the Road Fund and for NamFund, with an audit opinion by the Auditor General; and
- (c) A statement of service performance with regard to the Performance Statement, including an audit opinion by the Auditor General.

THE NATIONAL ROAD ADMINISTRATION OF NAMIBIA (NAMROAD)

1. General

NamRoad is an agency of the state. It is a corporate body, which can sue and be sued, and which can acquire, hold title to and dispose of property. It only has the powers which are vested in it in terms of an act of Parliament, or which can be assigned to it by the Minister of Works, Transport and Communication, in terms of an act of Parliament. NamRoad shall be responsible to the Minister of Transport for meeting its financial and management reporting obligations.

NamRoad will operate through two sources of funds. Firstly through appropriations from a dedicated Road Fund, as authorised by the board of NamFund (Appendix 1) through approval of (i) a One-Year Programme; and (ii) an Indicative Five-Year Programme, which both will comprise three components: (a) construction of state roads; (b) maintenance of state roads; and (c) the NamRoad administration. The One-Year Programme will set out the total maximum amount of moneys to be spent for each of the components. The purpose of the Indicative Five-Year Programme is to allow NamFund to authorise the minimum amount of money that can be spent in the coming five years. This minimum amount of money will be tied to the authorised amount of money to be spent (in real terms) for each one of the components in terms of the One-Year Programme, e.g. (a) 95% of authorised maximum expenditure for (i) maintenance; and (ii) the NamRoad Administration; and (b) 100% of estimated future costs during each year of implementation for approved construction projects. As part of each One-Year Programme, NamFund will also approve new construction projects.

Secondly, NamRoad will undertake to construct state roads which Parliament decides should be built although, NamRoad and NamFund in terms of their respective objectives conclude that they are not justified, or that they should only be built at a later time. In the first instance, the full cost of the roads will be financed through appropriations from the Central Revenue Fund. In the latter case, Parliament will make available the funds required at the desired time of construction, and these will then be paid back to the Central Revenue Fund by NamFund at the time when it would have been appropriate to build the roads as judged by NamRoad/NamFund. The initial planning (up to and including preliminary design) of roads to be financed with appropriations from the Central Revenue Fund is the responsibility of the Ministry of Works, Transport and Communication. The maintenance of such roads, once constructed, is at all times the responsibility of NamRoad, and with financing from NamFund.

2. The Principal Objective

The principal objective of NamRoad shall be to manage the State Road network so that it generates maximum national economic benefits.

3. The Board of Directors

The affairs of NamRoad shall be managed by a board of directors, which shall have not less than 6 and not more than 8 members. Directors shall be appointed for a period of 3 years by the Minister of Works, Transport and Communication in Cabinet. Directors can be reappointed for one further 3-year period.

Directors shall possess an understanding of and have expertise in such matters as will ensure the achievement of the objectives of NamRoad.

Persons whose interest or duty would be in conflict with the duty of a director would not be eligible for appointment to or for retaining membership of the board. (This means that e.g. persons who (i) on a regular basis would have an economic interest in contracts to be awarded by NamRoad; or (ii) in their capacity as civil servants have to deal directly or indirectly with NamRoad; or (iii) in their capacity as political office bearers would be able to take decisions which directly or indirectly affect NamRoad, would not be eligible for appointment. Officers and directors of the organisation to be set up to manage NamFund will not be eligible either, and vice versa.)

Any member may at any time be removed from office by the Minister of Works, Transport and Communication in Cabinet for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Minister.

The board shall appoint the General Manager of NamRoad, who shall not be a member of the board. The terms and conditions of employment of the General Manager shall be determined by the board.

4. Functions

The functions of NamRoad are to:

(a) manage the state road network, including planning, design, supervision, construction and maintenance in accordance with (i) programmes authorised by NamFund; and (ii) construction and maintenance standards set by the Minister of Works, Transport and Communication;

(b) assist the local road authorities with the preparation of their plans and budgets for road maintenance;

- (c) advise and assist local road authorities on road maintenance and construction matters;
- (d) advise the government on policies, standards and guidelines for road construction and maintenance to ensure a safe and efficient road network;
- (e) recommend to NamFund levels of expenditure for maintenance of and investments in the State Road network and the NamRoad administration for the next financial year and for each year of the next five years;
- (f) implement One-Year and Indicative Five-Year Programmes for (i) road maintenance of the state road network; (ii) investments in the state road network; (iii) the NamRoad Administration as authorised by NamFund;
- (g) implement additional investment programmes as decided on by Parliament, and in terms of an agreement between the Ministry of Works, Transport and Communication and NamRoad/NamFund.
- (h) advise, as requested, the management of NamFund on appropriate levels of levies, duties and charges on vehicles and/or for use of vehicles on the public road network;
- (i) support a training and education strategy which will assist the road contracting industry to develop quality procedures and quality products;
- (j) follow research and development within the road sector;
- (k) carry out an affirmative action programme; and
- (l) undertake to organise the collection of road user charges to be deposited into the Road Fund, in terms of an agreement with NamFund.

5. Powers

NamRoad will have the power to:

- (a) through agents, maintain and construct roads which are part of the state road network;
- (b) establish, maintain and operate one or several bank accounts (the NamRoad Account);
- (c) make payments from the Account as authorised by the enabling act
- (d) invest moneys in the Account in accordance with appropriate and established regulations or with procedures approved by the Minister of Finance;
- (e) borrow money and issue guarantees or indemnities in accordance with appropriate

established regulations or with procedures approved by the Minister of Finance;

- (f) establish and staff an appropriate organization, subject to the condition that it shall be permanently represented in each region through a Regional Resident Engineer;
- (g) appoint staff and determine their terms and conditions of employment;
- (h) fire staff in terms of applicable (private sector) labour laws;
- (i) engage external auditors to prepare audits, as approved by the Auditor General;
- (j) enter into contract with private or legal persons for the execution of any of its functions;

6. Additional Powers that may be granted by the Minister

The Minister of Works, Transport and Communication may grant the following powers vested in him in terms of an act of Parliament, on a temporary basis or on an ongoing basis, subject to (i) regulations that may be issued by him; and (ii) the condition that any person (legal or otherwise) affected by the exercise by NamRoad of these powers can appeal to the Minister, in addition to having recourse to any other legal means:

- (a) declaration of temporary state roads and temporary closure of state roads;
- (b) the "road authority powers" of the Roads Ordinance;
- (c) reservation of land for a proposed road;
- (d) declaration of restricted roads;
- (e) control of overloaded and abnormal vehicles on the state road network;
- (f) the setting of fees or charges for operating overloaded or abnormal vehicles or for having operated overloaded or abnormal vehicles on the state road network in term of prescribed rules;
- (g) the collection of such fees and charges, which must be deposited into the NamFund Account;
- (h) directing drivers of overloaded vehicles to remove excess loads on the vehicle;
- (i) the control of appropriate payment of such levies, duties and charges on road users which parliament may decide should be dedicated to road maintenance and/or road construction, including construction of bridges;

7. Duties

In exercising its functions and powers, NamRoad shall

- (a) have regard to the policy of the government in relation to roads;
- (b) consult with relevant local authorities and road users before submitting any proposals for a One-Year and an Indicative Five-Year Programme;
- (c) operate its administration, and undertake maintenance and construction activities in the most cost-effective way possible, having regard to its principal objective. To this end NamRoad shall (i) engage agents (road contractors) for performing maintenance and constructing activities, normally through a competitive tendering procedure to be approved by its board; and, (ii) if found cost-effective, engage consultants for the preparation of feasibility studies, preparation of detailed design, preparation of annual maintenance programmes and for undertaking supervision of maintenance and construction works, through a competitive tendering procedure to be approved by its board.
- (d) formulate, publish and implement tendering procedures and policies for (i) road contractors; (ii) consultants required for the services set out under (c); and (iii) other goods and services required by NamRoad. These procedures and policies shall take the following into account:
 - (1) the desirability of promoting competition in the road contracting and consultancy industry;
 - (2) the desirability of promoting small-scale contractors to ensure the long-term competitive structure of the industry;
 - (3) the desirability of promoting labour-based maintenance and construction techniques;
 - (4) the desirability of allowing state-owned contractors or contractors owned by local authorities to adopt to competitive market conditions; and
 - (5) the costs of administration associated with the tendering procedure or of any contract formed pursuant thereto.
- (e) formulate and implement a human resources policy which shall promote equal opportunities and the development and encouragement of all irrespective of race, creed and sex; and
- (f) operate financial management and accounting systems in accordance with generally accepted accounting procedures.

8. Preparation of Programmes and Performance Statements

Based on guidelines issued by NamFund, NamRoad shall prepare each year (i) a One-Year Programme; (ii) an Indicative Five-Year Programme; and (iii) a Performance Statement, which after been authorised by NamFund shall be submitted jointly to the Minister of Works, Transport and Communication not later than xx. The Programmes and Performance Statement shall be prepared taking into account (already) approved (i) maintenance and construction standards; (ii) construction projects; and (iii) indicative five-year programmes. Additionally, the Programmes and Performance Statement shall be prepared by taking into account guidelines issued by the Minister with regard to measures to judge the performance of NamRoad.

The Performance Statement shall include the following:

- (i) the basis for recommending and the costing of new construction projects;
- (ii) the basis for recommending and costing of different types of maintenance activities;
- (iii) the measures by which the performance of NamRoad can be judged;
- (iv) the approved tendering procedures;
- (v) the management and financial systems under which NamRoad will undertake its functions; and
- (vi) risks associated with the recommended One-Year and Indicative Five-Year Programmes, and recommended risk mitigating actions to be taken by NamRoad and the government in this regard.

The recommended Programmes and the Performance Statement, including the guidelines issued by the Minister, are to be made public by laying them before parliament.

9. Directives by the Minister

NamRoad shall comply with any lawful direction in writing of the Minister of Works, Transport and Communication which is not in contradiction with the objectives, duties, powers and functions of NamRoad, subject to the condition that a copy of such a direction shall lay before parliament and shall be published in the *Government Gazette*.

10. Financial Provisions

The management of NamFund and NamRoad shall agree on the manner in which during each financial year authorised funds for construction, maintenance and the NamRoad

administration shall be transferred to the NamRoad Account

Payments from the NamRoad Account shall only be made by or on behalf of NamRoad, as determined by its board of directors.

11. Reporting and Auditing

NamRoad shall prepare quarterly financial and performance reports to be submitted to the Minister of Works, Transport and Communication.

NamRoad shall prepare an annual report which shall comprise

- (a) a statement of the activities of the year;
- (b) financial statements, with an audit opinion by the Auditor General
- (c) A statement of service performance with regard to the Performance Statement, including an audit opinion by the Auditor General.