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MINISTRY OF WORKS, TRANSPORT AND COMMUNICATION



DEPARTMENT OF TRANSPORT

MEMORANDUM

ROAD SECTOR REFORM IN NAMIBIA:

VOLUME 3:

**EXPLANATORY NOTES ON THE
ROAD FUND ADMINISTRATION ACT**

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CONTENTS

VOLUME 3: EXPLANATORY NOTES ON THE ROAD FUND ADMINISTRATION ACT

(See also: Volume 1: Background, Policies and Structures, and
Volume 2: Explanatory Notes on the Roads Authority Act)

1.	STRUCTURE OF THE ACT	1
2.	LONG TITLE	1
3.	PART I : PRELIMINARY PROVISIONS	2
	Section 1 : Definitions	2
4.	PART II : THE ROAD FUND ADMINISTRATION	2
	Section 2 : Establishment of the Road Fund Administration	2
	Section 3 : Objects of the Administration	2
	Section 4 : Board of directors	3
	Section 5 : Disqualification for appointment as director	4
	Section 6 : Tenure of office of directors	4
	Section 7 : Vacation of office and filling of vacancies	4
	Section 8 : Alternate directors	4
	Section 9 : Meetings of the board	4
	Section 10 : Disclosure of interest	4
	Section 11 : Allowances	5
	Section 12 : Committees of the board	5
	Section 13 : Restriction of liability	5
	Section 14 : Chief Executive Officer and other employees	5
	Section 15 : Functions of the Administration	5
5.	PART III : THE ROAD USER CHARGING SYSTEM	7
	Section 16 : Establishment of the Road Fund	7
	Section 17 : Utilization of the Fund	8
	Section 18 : Determination of road user charges	10
	Section 19 : Determination of amount of funding	12
	Section 20 : Funding of Roads Authority and approved authorities	13
	Section 21 : Business plan	14
	Section 22 : Performance statement	15
6.	PART IV : FINANCIAL AND GENERAL PROVISIONS	16
	Section 23 : Financial year	16
	Section 24 : Accounting and auditing	16
	Section 25 : Annual report	16
	Section 26 : State land may be made available to the Administration	16
	Section 27 : Delegation of powers	16
	Section 28 : Regulations	16
	Section 29 : Transitional provisions	17
	Section 30 : Short title and commencement	17
	ANNEXURE A : ROAD FUND ADMINISTRATION ACT, 1999 (ACT NO. 18 OF 1999)	18

VOLUME 3 : EXPLANATORY NOTES ON THE ROAD FUND ADMINISTRATION ACT

1. STRUCTURE OF THE ACT

1.1 The purpose of the Act is to implement a Road Fund Administration to manage a road user charging system, to establish a Road Fund and to provide for matters incidental thereto. A particular feature of the Act is that while it provides the Road Fund Administration (Administration) with wide powers, the exercise of these powers is balanced by clearly defined responsibilities with regard to the objectives to be achieved and the principles to be implemented in the performance of functions. The Act is structured to provide a logical approach to the administration of the road user charging system.

1.2 Part I, Preliminary Provisions, contains the definitions, one of the most important of which is the definition of the “road user charging system” as it is to be interpreted for Namibia.

1.3 Part II, deals with the establishment of the Road Fund Administration, defines the objectives to be achieved by the Administration, establishes the board of directors to manage the affairs of the Administration, contains various provisions with regard to the operation of the Administration and its employees and, importantly, sets out in some detail the functions and powers of the Administration.

1.4 Part III, is devoted to the road user charging system and covers:

- (a) The establishment of the Road Fund and its sources of revenue;
- (b) the purposes for the Road Fund may be utilised;
- (c) the imposition of road user charges and the principles to be applied in setting the levels of such charges;
- (d) the principles to be applied in determining the amount of funding to be made available for roads;
- (e) the principles to be applied in determining the manner in which roads funding will be allocated to implementing agencies;
- (f) the format of the business plan which is the formal document containing, inter alia, approved expenditure programmes; and
- (g) the performance statement which the Administration must submit to the Minister for purposes of enabling the Minister to monitor the performance of the Administration.

1.5 Part IV, contains general and financial provisions dealing with the financial year, accounting and auditing, annual report, delegation of powers, regulations and transitional provisions.

2. LONG TITLE

2.1 The long title refers to: (a) the establishment of the Road Fund Administration; (b) the Administration’s task to manage the road user charging system; and (c) the establishment of the Road Fund.

2.2 The Act was introduced by the Minister of Works, Transport and Communication who is responsible for the transport portfolio and under whose direction the road user charging policies in the Act have been developed. The Minister of Finance, who has overall responsibility for economic efficiency at the macro-economic level in

Namibia, will be responsible for the administration of the legislation and, in consultation with the Minister of Works, Transport and Communication, for the appointment of members of the board of directors of the Road Fund Administration.

3. PART I : PRELIMINARY PROVISIONS

Section 1 : Definitions

3.1 The following definitions are of importance:

- (a) “National road network” is defined so that it refers to trunk, main and district roads which have been proclaimed in terms of the Roads Ordinance, 1972¹. Certain roads inside local authority areas, provided they have been proclaimed in terms of the Ordinance, form part of the national road network;
- (b) “road user charging system”, has, for purposes of the legislation, a specific interpretation which sets it apart from the general meaning. The important features of the definition are that it confirms that an *independent* system to *regulate road funding* is created and that the system is based on *economic efficiency* and *user pay* principles. To ensure that road funding decisions will be taken strictly in accordance with the principles in the legislation the definition states the sequential order in which decisions are to be taken, namely: (i) determination of the amount of funding, (ii) determination of the manner of allocation of funds, and (iii) determination of road user charges. The definition therefore makes it very clear that the intention of the legislator is to avoid a situation where road user charges, such vehicle licence fees or fuel levies, are externally determined and thus in effect determine the funding available for roads.

4. PART II : THE ROAD FUND ADMINISTRATION

Section 2 : Establishment of the Road Fund Administration

4.1 Section 2 provides for the establishment of the Road Fund Administration and that it shall be a juristic person.

4.2 The Administration must have legal status since it must be capable, *inter alia*, to open a banking account, enter into agreements (e.g. for loans) with persons or institutions and generally function as a legal persona in its own right.

Section 3 : Objects of the Administration

4.3 This is an important section since it defines the specific objectives to be achieved by the Administration. The following should be noted:

- (a) There are two specific ultimate objectives to be achieved, namely: (i) a “safe” road sector, and (ii) an “economically efficient” road sector.
- (b) A “safe” road sector is regarded as achieved if there is compliance with the minimum road standards prescribed by the Minister responsible for transport in terms of section 16(5) of the Roads Authority Act. The latter Minister therefore in effect defines road infrastructure safety

¹ Farm roads, which are also proclaimed - in order to ensure public accessibility - are excluded from the definition of national road network and will therefore not qualify for funding through the road user charging system. These roads were previously also not seen as part of the roads which was in the normal course of events funded through the roads budget of the Department of Transport.

standards².

- (c) An “economically efficient” road sector is achieved if the interpretation placed thereon by the Administration through the rules and principles which it must frame under section 19(2) are implemented (see later discussion in this regard). The concept “economically efficient” is further discussed elsewhere in this document.
- (d) The Administration must achieve the objectives by managing the road user charging system which provides it with the power to determine road funding levels, the manner in which funds are to be allocated and impose road user charges.
- (e) It is the “road sector” which must be safe and economically efficient. This is important because it stresses that the efficiency to be achieved refers to road transport operations as a whole and not only the provision of road infrastructure.

4.4 The basic function of the Administration is therefore to ensure that roads are funded in accordance with the principle of economic efficiency. This principle is one of the cornerstones of the road user charging system and therefore it can also be said that the RFA is the body, or the “trustees”, responsible for upholding the integrity and principles of the road user charging system. Subsequent sections in the Act provide further clarification how road funding amounts shall be determined (section 19) and the manner in which the funds shall be allocated (section 20). The Administration raises revenue by imposing road user charges (section 18).

Section 4 : Board of directors

4.5 The affairs of the Administration are to be managed by a board of directors appointed by the Minister of Finance in consultation with the Minister responsible for transport. The involvement of the latter Minister is necessary because of that Minister’s ultimate responsibility for the transport function. Consultation between the two Ministers will also ensure that a board with an appropriate balance of expertise, which should, *inter alia*, but not only, include road and transport expertise, is appointed.

4.6 The board of directors of the Administration consists of three to five members. The reason for the board being small is that the emphasis is on the expertise required for the implementation of a definitive policy, based on principles contained in the legislation. The board is therefore not intended to be a “representative” board since such a board would tend to take decisions upon the basis of “acceptability” to the majority of members and be coloured by the individual interests of represented parties. The emphasis is on the board’s independence and autonomy. In section 10 of the Act strict provision is made requiring board members to disclose interest. Specific provision is made for interested parties to participate via mandatory consultation procedures.

4.7 The majority of the board shall not be members of the Public Service. The latter provision ensures that the private sector has a controlling majority on the board thereby further emphasising its intended independence from political or executive influence.

4.8 The Chairman of the board is appointed by the Minister from among the members of the board, again in consultation with the Minister responsible for Transport (subsection (3)). In subsection (4) provision is made that the names and nationality of board members shall be notified in the Gazette.

Section 5 : Disqualification for appointment as director

² “Road safety” is a broad concept. It comprises a number of inter-related activities, e.g. controlling of vehicle roadworthiness, establishing rules of the road, traffic law enforcement, etc. In the context of the Act it refers to road infrastructure standards.

4.9 The provisions requiring directors to be solvent and without a criminal record (for the past 10 years)³ are standard provisions in Namibian legislation.

Section 6 : Tenure of office of directors

4.10 A director may hold office for three years and may be re-appointed.

Section 7 : Vacation of office and filling of vacancies

4.11 The provisions of this section are standard, but it should be noted that absence from three consecutive board meetings without permission requires a director to vacate his or her office.

Section 8 : Alternate directors

4.12 Provision is made in this section for the Minister, in consultation with the Minister responsible for Transport, to appoint alternate directors for each director. Alternates are necessary to ensure that the board is always able to establish a quorum. For example, if the board consists of only three members and one is unable to attend a meeting of the board it will be unable to function unless an alternate is available (see section 9 which provides for a quorum of three).

Section 9 : Meetings of the board

4.13 The first meeting of the board shall be held at a time and place determined by the Minister. Thereafter meetings shall be held at least once every four months to ensure that the board at all times keeps a close watch on the affairs of the Administration. Special meetings shall be held at the Minister's discretion or if requested by at least two members of the board. The chairperson shall preside at board meetings or, in his or her absence, a director elected by the directors present. A quorum shall be three members of the board. A decision of a majority of directors shall be a decision of the board and, in the event of an equality of votes, the chairperson shall have a casting vote.

4.14 The board may permit any person who is not a director to attend and take part in discussions of the board if, in the opinion of the board, the relevant discussions relate to a matter in which such a person has an interest. Such a person may not vote.

4.15 The chairperson shall keep a record of all meetings held by the board and the Minister shall receive a copy of all such records.

Section 10 : Disclosure of interest

4.16 Provision is made in this section that no director who has any interest in matters which is the subject of consideration by the Board shall take part in discussions or vote.

4.17 Provision is made in subsection (3) for any deliberate non-disclosure of interest to be an offence. Moreover, subsections (4), (5) and (6) provide for the determination of the value of any advantage or potential advantage gained by any person convicted of an offence and for such value to be taken into account in determining a fine which may be up to three times the value determined.

Section 11 : Allowances

³ Note that the formulation of the Act in section 5(b) is faulty in that it requires a person to be free from conviction or imprisonment for a period of 10 years immediately preceding the date of commencement of the Act rather than a period of 10 years immediately preceding his or her date of appointment.

4.18 This section provides for the payment for services of directors or their expenses out of the Fund and in accordance with levels which the board determines in consultation with the Minister.

Section 12 : Committees of the board

4.19 The board may appoint committees to assist it. For example, the board may have a roads technical committee which monitors developments in road engineering, road transport and vehicle operating costs or a financial and economics committee which advises it regarding economic indices such as interest rates, exchange rates, shadow prices, the inflation rate, etc. to be used in applying the rules and principles framed under section 19(2).

4.20 A committee shall contain at least one member of the board in order to ensure that the board's responsibilities and its expertise in relation its functions are at all times taken into account in the course of the work of committees.

Section 13 : Restriction of liability

4.21 A member of the board is not personally liable for any loss or damage in connection with duties on the board unless the loss or damage arises from wilful misconduct , gross negligence, etc.

Section 14 : Chief Executive Officer and other employees

4.22 The Administration⁴ appoints, in consultation with the Minister and the Minister responsible for transport, a Chief Executive Officer with relevant expertise to administer the affairs of the Administration in accordance with the policies and directions of the board. Other employees may be appointed by the Administration to assist the Chief Executive Officer.

4.23 The remuneration and other conditions of service of employees in management are determined by the Administration in consultation with the Minister but the Administration may on its own determine the above for employees who are not in management.

4.24 The Chief Executive Officer is subject to the provisions of section 10 regarding disclosure of interest.

Section 15 : Functions of the Administration

4.25 This a particularly important section which is closely related to the basic objectives of the Administration in section 3 of the Act. It makes specific mention of the Administration's various functions and, with regard to the important or "core" functions, also refers to and thus links those sections which contain the principles in accordance with which the relevant functions must be performed. This approach, which on the one hand empowers the Administration while on the other hand providing the principles in accordance with which functions are to be executed, reflects the underlying philosophy of the Act. The Administration therefore does not exercise arbitrary or discretionary judgment in making decisions but is obliged to act in accordance with clearly defined principles. For this reason the board of directors can be said to perform the role of "trustees" on behalf of road users and the general public and **who are responsible for upholding the integrity and principles of the road user charging system.**

4.26 The Administration enjoys autonomy and is therefore, subject to the constraints mentioned above,

⁴ The Act refers to both the "Administration" and the "board". In general the board is part of the Administration and it is the Administration which is the legal person. A reference to "board" rather than "Administration" is of importance when the power of the board to give direction with regard to the way in which the Administration goes about its business is of relevance (see subsection (2)) or when certain decisions are to be taken, e.g. committees appointed.

independent in executing its road funding function. The Administration in effect performs a “regulating” function with regard to those functions directly affecting road funding. **“Regulation” in this instance means that the RFA is responsible to ensure adherence to certain principles⁵. In fact, in the sense that the RFA is bound by the statutory principles in the Act, the RFA does not have discretionary powers - or at least not with regard to its decision-making powers in regard to road funding.** Its duty is indeed to interpret the economic efficiency principles and its concomitant rules and procedures and to give essence thereto within a clearly defined context.

4.27 The RFA’s output, in regard to this function, is in the form of a series of decisions about the funding to be approved for individual road projects and programmes. The Roads Authority and other approved authorities qualifying for funding from the Road Fund (Fund) must motivate their applications in accordance with prescribed rules and procedures (provided by the Administration in terms of section 19(2) of the Act) and if the Administration has satisfied itself that applications are in accordance with the relevant rules and procedures, it is bound to *in principle* approve the funding amount concerned.

4.28 The main functions of the Administration as set out in subsection (1) are to: (i) manage the road fund, (ii) impose, determine the levels of and collect road user charges, (iii) determine the amount of funding for roads, (iv) determine the manner in which funds shall be made available, (v) ensure that funds allocated are used efficiently - the formulation in the Act provides for monitoring of compliance with a procedures agreement (in the case of the Roads Authority) and conditions imposed on funding allocations (other authorities), (vi) make recommendations to the Minister regarding the application of the Act, (vii) upon request, but subject to such conditions as may be agreed upon, advise and assist the Minister and others regarding the “financial” management of roads or the exercise of any other relevant power, duty or function, and (viii) administer, if requested and subject to agreed conditions, funds donated by donors.

4.29 An analysis of the RFA’s various functions confirm that they can be grouped into core or basic functions (that of ensuring that road funding is done in terms of specific principles) and “operational” or managerial functions (such as to administer the system for setting and collecting road user charges and to manage the Road Fund’s finances). In addition there are also auxiliary functions in support of the above, such as its own personnel and finance functions, etc., which are not specifically mentioned in the Act.

4.30 In managing the Road Fund the Administration must comply with any regulations made by the Minister under section 28(e). Generally it is expected that the Administration must ensure that: (i) the Fund is at all times solvent, i.e. that its assets exceed its liabilities, and that it has sufficient liquidity, i.e. its cash flow must be such as to enable it to meet its commitments in time, (see also section 22(1)(d) - performance statement), (ii) funds which are at any time surplus in the Fund are safely but nevertheless profitably invested (such a situation may, *inter alia*, arise when a reserve fund is established under section 17(1)(k)); (iii) funds are used only for the purposes intended, (iv) the loan commitments of the Fund taken over at the commencement of the Act (section 17(1)(i)) as well as any loans obtained by itself (clause 17(1)(j)) are managed in accordance with sound principles of credit financing, and (v) appropriate control measures are in place to account for all revenue and expenditure. The Act contains a provision (see section 13) which limits the personal liability of any director, alternate director or committee member for loss or damage arising from the performance of duties unless arising from gross negligence or failure to comply with a provision of the Act or a direction or decision given under the Act. Since the sound financial management of the Fund is a particularly important function of the Administration it should be expected that the Minister will avail himself or herself of the opportunity to require appropriate particulars in the Performance Statement (section 22(1)(c), (d) and (e)) and to issue regulations under section 22(e). In addition, the Minister can require agenda discussion via the provisions of section 9(3) at all board meetings.

4.31 In view of the fact that the management of the Fund is in itself a function requiring appropriate managerial

⁵ A discussion about “regulation” and whether the type of regulation intended in this instance compares with the type of regulation required for state enterprises operating under monopolistic conditions, is not attempted herein. It should, however, be noted that the latter type of organisations are, in the absence of competition, subjected to regulation to ensure that market power is not abused.

expertise, the board of directors should ensure that in its appointment of a Chief Executive Officer and other employees under section 14, such relevant expertise is made available. (See further discussion under section 16(2).)

4.32 Subsection (2) provides the Administration with powers to open banking accounts, own or hire property and exercise such powers as may be provided for in the Act.

4.33 Subsection (3) empowers the Administration to enter into agreements in respect of any matter related to the powers, duties and functions of the Administration and for it to delegate any of its powers if necessary for the efficient performance of an act covered by an agreement with another party. (For example, the Administration can contract out the collection of road user charges to another party and then delegate certain of its powers in this regard to such a party.)

5. PART III : THE ROAD USER CHARGING SYSTEM

Section 16 : Establishment of the Road Fund

5.1 One of the important implications of requiring beneficiaries or users to pay (user pay principle) is that the revenues from such payments should in a transparent way be kept separate from general revenue accruing to the Central Revenue Fund. A dedicated Road Fund therefore serves two purposes: (i) it ensures that revenues generated from road users through road user charges are all collected into one account, and (ii) it provides a mechanism to control that revenues are used only for purposes which benefit road users. The latter, which may be expressed as the “payer should benefit principle” can be regarded as a corollary to, or the reciprocal of, the “user pay principle”, one of the core principles of the road user charging system. Sections 16 and 17, respectively, are intended to achieve the above two purposes.

5.2 Subsection (1) of section 16 establishes the Road Fund and makes it mandatory for road user charges to be paid into the Fund, as well as moneys from a number of other sources. The latter comprise: moneys voted by Parliament in terms of section 14(3), capital gains, interest or dividends on investment, moneys obtained through loans, donations or grants, moneys payable in terms of any judgment relating to compensation in favour of the Roads Authority and any other moneys accruing to the Roads Authority (assuming that the latter is able to generate income through, for instance, consulting services) or the Fund with the consent of the Minister.

5.3 Subsection (2) provides that the Road Fund Administration shall manage the Fund in accordance with sound principles of financial management and by observing measures to protect the liquidity of the Fund. As previously noted (see paragraph 4.30), the Act makes provision for the Minister to exercise control over the Administration’s management of the Road Fund through the provisions of section 22 of the Act (performance statement) and section 28 (regulations). The board of directors of the Administration should therefore implement control measures enabling it to continuously control and monitor the solvency and liquidity status of the Fund. Typically, the regular meetings of the board of directors would require regular review of funding commitments (instalments) and actual revenue receipts from road user charges against projected receipts in order to be able to take remedial steps should, for some reason or other, revenue (largely dependent on the volume of fuel sales, which is seasonally and annually variable) differ from projected figures. The responsibilities of the board of directors in this regard can be interpreted as also covering its decisions about loans and the future repayment commitments resulting therefrom. In particular, loan financing, if used to cover basic financing deficits, i.e. financing deficits resulting from an imbalance between road user revenues and long terms stable road funding levels (as contemplated in section 20(4)(b)(ii) of the Act), could obscure the real discrepancies or shortfalls in the levels of road user charges in the short term and give rise to very sharp future rises in the levels of road user charges. Therefore, the Administration should seek to only finance temporary “peaks” in funding, such as when a major new road project is undertaken, with loan financing. Such peaks would customarily be balanced by future “valleys” in the funding regime which would generate a surplus in revenue which can then be used to repay loans.

Section 17 : Utilization of the Fund

5.4 As mentioned earlier, this section has as purpose to ensure that road-use related revenues should not be diverted for purposes other than to benefit road users. The introductory sentence obliges the Administration to utilise the moneys in the Fund, subject to subsection (2), and to the extent that it is to the benefit of road users, for the purposes mentioned in paragraphs (a) to (n) of subsection (1).

5.5 Section 17 therefore defines the type of expenditure, *rather than the quantum*⁶, for which the moneys in the Fund may be utilised. The is provision was regarded as of great importance by parties who were consulted during the policy formulation phase for the road user charging system. In this respect it may be noted that the principles of the road user charging system provide for costs other than road infrastructure costs to be funded from the Fund, provided, and to the extent, that they are to the benefit of road users (e.g. road safety promotion costs, road research costs, on-road traffic policing and law enforcement costs, etc.). However, the fees which are charged for services such as vehicle roadworthiness testing and driving licence testing constitute a form of “user charging” not covered in the Act and should be taken into account when the Fund makes a contribution to the costs of these services⁷.

5.6 The major costs, listed in subsection (1), which are intended to be funded through the road user charging system are:

- (a) The management of the national road network (see definition of “management of the national road network” in section 16(1) of the Roads Authority Act);
- (b) the administrative expenditure of the Administration;
- (c) major urban arterial roads (defined in subsection (6)); and the traffic related maintenance of any road in any local authority area;
- (d) contributions to any traffic information system;
- (e) traffic law enforcement, adjudication and overload control;
- (f) subject to the Minister’s approval, contributions to vehicle testing and driver testing (see footnote in this regard);
- (g) road research;
- (h) administration of the National Road Safety Act⁸;
- (i) repayments of any loan obtained by the Government of Namibia before the commencement of this Act;

⁶ The quantum of funding is the subject of sections 19 and 20 and also section 17(2).

⁷ The policy to distribute the costs of traffic law enforcement, road safety promotion and related costs between the road using public, directly through road user charges in terms of the Act, in terms of fees in other legislation and to the general taxpayer (as a beneficiary) via Parliamentary appropriations, is complex and has been addressed and is still being addressed (e.g. the policy formulation process on road safety promotion). These considerations need to be taken into account in making decisions about funding from the Road Fund.

⁸ A new national Road Traffic Safety Act is under preparation. The intention is that the activities of the National Road Traffic Safety Council should be funded through levies on fuel imposed through the Road Fund Administration Act. The amount of funding to be provided out of the Fund will be determined by the Minister responsible for the transport function and not the Road Fund Administration. The Minister will consult with the Administration and will be required to apply similar principles as are required to be applied by the Administration in determining funding amounts to be financed out of the Fund.

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- (j) to pay capital, interest and incidental costs or charges of other loans obtained by the Road Fund;
 - (k) the establishment of a reserve fund for the purposes of sections 20(b)(ii) (keep road user charges stable) and 22(1)(d) (measures to protect liquidity of the Fund);
 - (l) the payment of compensation arising out of the performance of the Roads Authority, except if the compensation arises out of deficiencies in the regulations under section 16(5) of the Roads Authority Act (in which case the Minister (Government) will be responsible for the costs);
 - (m) the cost of insurance against any claim for compensation; and
 - (n) any other expenditure related to the achievement of the objectives of this Act and which is approved by the Minister.

5.7 Subsection (2) both empowers and obliges the Administration to make determinations regarding the types and maximum amounts of expenditure which may be incurred for *certain of* the categories of expenditures which may be funded from the Road Fund. Subsection (2) supersedes the provisions of section 19(1)(a)(i), but only with regard to the categories of expenditure mentioned in section 17(2).

5.8 Section 17(2) requires the Administration to, after consultation as determined by the Minister, determine the types and maximum amounts of expenditure which may be incurred with regard to *some* of the expenditures in subsection 17(1). The most notable exclusion from section 17(2) is the determination with regard to the funding determinations for management of the road network (section 17(1)(a)), while funding amounts with regard to paragraph 17(1)(b) (administrative expenditure of the Administration), paragraph 17(1)(h) (road traffic safety promotion) and a number of others which are of a contractual nature are also not subject to determination under section 17(2), e.g. payment of compensation or repayment of loans. Since section 19(1)(a), which requires the Administration, in determining the funding to be made available through the road user charging system, to ensure “*subject to section 17(2), the achievement of an economically efficient road sector*”, makes a specific reference to section 17(2), the intention of the legislator must be interpreted as being to allow the Administration some flexibility in applying the economic efficiency principle with regard to those funding determinations which are listed in section 17(2). In practice the relevant expenditures are difficult to quantify by means of economic efficiency theory, *inter alia*, because of lack of empirical or research data. Subsection 17(2) therefore allows the Administration to place parameters on the relevant expenditures, after consultation with interested parties, thereby establishing an environment where the parties concerned know what to budget for and what to expect in terms of funding allocations. Having noted the above, it should again be emphasised that the Administration, through the subsection 17(2) provision, is not given *carte blanche* to discard the basic statutorily prescribed principles for determining funding amounts with a view to the achievement of a safe and efficient road sector. The Administration is, however, freed from being obliged to justify its decisions in terms of the basic principles and is therefore not exposed to the type of debate and consultation about its decisions with regard to these expenditures as is the case when it makes decisions about the funding amounts for managing the roads.

5.9 Subsection (3) obliges the Administration to utilise funds deriving from other sources than road user charges strictly in accordance with the conditions under which the relevant funds were made available to the Fund. This is a necessary provision to re-assure donors or other parties that there is statutory protection against donations or appropriations being diverted.

5.10 Subsection (4) ensures that funds may not be expended from the Fund except in accordance with an approved budget as contained in the business plan (section 21).

5.11 Sub-section (5) prohibits the sale in execution or attachment of the assets of the Fund.

5.12 Sub-section (6) provides both guidelines as to what constitutes a “major urban arterial road” and empowers the Minister to designate such a road by notice in the Gazette. Such a designation is necessary before the

Administration may make funding allocations for planning, design, construction or non-traffic related maintenance with regard to any road within a local authority area which does not form part of the national road network.

5.13 In conclusion, it should be noted that although subsection 17(1)(i) makes provision that the Fund should take over the responsibility for the repayments in connection with past loan agreement for road projects to which the Government is party, this liability does not imply that “depreciation” costs of existing road infrastructure should be carried by the Fund. The principles of the road user charging system provide that all existing (constructed in the past) road infrastructure should be regarded as “sunk” costs. In addition, ownership of the national road network will not be transferred to the Roads Authority which therefore means that there will not be a balance sheet item to which depreciation costs can be allocated. The Fund should be seen for what it basically is, namely a banking account which facilitates the management of the finances of the road user charging system and which serves to provide:

- (a) a means of ensuring that road user revenues are all channelled into the Fund;
- (b) a means of controlling that moneys in the Fund are only utilized for the benefit of road users;
- (c) a mechanism for dealing with short term surpluses and deficits in cash flows;
- (d) a responsible entity which can enter into loan agreements for roads but without such loans appearing on the Government’s loan account; and
- (e) a basis for a cost accounting system for the “economic road network”.

Section 18 : Determination of road user charges

5.14 Subsection (1) defines the different types of road user charges and empowers the Administration to, from time to time, impose such charges by means of a notice in the Gazette. The charging instruments envisaged are:

- (a) a charge on a vehicle based on its mass and configuration or a so-called “weight-distance” charge (envisaged for very heavy vehicles) which will be a charge based on the kilometres travelled by a vehicle and which will vary depending on vehicle mass, number of axles, etc.;
- (b) an entry fee on foreign registered vehicles; and charge on vehicles,
- (c) a registration and annual vehicle licence fee; and
- (d) a levy on every litre of petrol sold and every litre of diesel sold for on-road use.

5.15 The various road user charging instruments provide a range of fixed cost and marginal cost charging instruments which are practical to administer and which allow the best possible implementation, subject to practical considerations, of the principles of the road user charging system with regard to the setting of road user charges.

5.16 Subsection (2) provides the Administration with the power to differentiate charges for different vehicles, different roads, different road user categories or any other basis of differentiation as the Administration may determine.

5.17 Subsection (3) deals with the principles for setting road user charges, which are that:

- (a) the total revenue from road user charges must be sufficient to allow, over time, a balance between the expenditures qualifying to be funded by the road user charging system and the (total) revenues available to the Fund by way of road user charges based on the user pay principle and other revenues. (These “other revenues” relate to the generation of income by the Fund itself,

such as the income received by way of dividends on investments or the proceeds of the sale of property (section 16(1)(c)) or income received in the form of donations (section 16(1)(f)) and this will evidently influence the amount required to be generated through road user charges.)

- (b) road user charges must be, as far practicable, equitable in respect of the different categories of vehicle owners and road users (the “equity principle”);
- (c) efficiency must be promoted by the right “pricing signals” (pricing efficiency principle⁹); and
- (d) charges should not result in discrimination between foreign and local road users. (The latter does not mean that individual charges may not be different for local and foreign users but that the net effect of all charges should be non-discriminatory.) This is a principle of the SADC Protocol on Transport, Communications and Meteorology (see chapter 4 of the Protocol).

5.18 Subsection (4) sets out various details to be included when charges are published in the Gazette. An important provision is subsection (4)(f) which provides for exemptions when charges would impact on non-road operations (non-users should not pay principle). The subsection also has provisions for the publishing of the measures to be applied when any person liable to pay a road user charge fails to do so.

5.19 The following subsection (5) takes cognizance that practical considerations should play a role, for example, the cost of administering exemptions or where evasion may occur, in allowing for exemptions or refunds and therefore some smaller inequities may have to be accepted.

5.20 Subsection (6) provides the Administration with access to necessary information for determining road user charges, subject to qualifications in respect of sensitive information.

5.21 In subsection (7) the term “motor vehicle” is defined.

Section 19 : Determination of amount of funding

5.22 This section deals with the principles to be applied by the Administration in determining the “amount of funding” to be made available through the road user charging system. It should be noted that section 19 does not refer to the determination of the amounts to be allocated in a particular year (manner of allocation). This section is definitive with regard to the basic function and objectives of the Administration.

5.23 Subsection (1)(a) states specifically that the Administration shall, in determining the amount of the funding to be made available through the road user charging system, *ensure* the achievement of the two objectives stated in section 3 of the Act, namely:

- (i) subject to section 17(2), an “economically efficient” road sector; and
- (ii) a “safe” road sector (which is in the legislation described as “compliance with prescribed standards”).

5.24 Sub-paragraph (i) contains the proviso, “*subject to section 17(2)*”, which has been referred to in the discussion of section 17. The proviso is, *inter alia*, not applicable to road funding determinations with regard to the Roads Authority (section 17(1)(a) and (b)), which are therefore fully subject to the two principles above..

⁹Efficiency is regarded as promoted if marginal road use prices (such as levies on fuel and weight-distance type charges) reflect as closely as possible marginal costs, i.e. those costs of road use which vary directly with road use as opposed to fixed costs which are not affected when vehicles use a road.

5.25 A “safe” road sector is regarded as being achieved if the Roads Authority is enabled, by the funding allocations it receives, to comply with the roads standards prescribed by the Minister responsible for Transport in terms of section 21 of the Roads Authority Act. It should be noted that the “safety” allocation determines the amount of funding if the funding amount so required, for a particular road, is higher than the funding amount required to meet the economic efficiency objective. Although it is, as a general rule, unlikely that safety requirements will dictate higher funding allocations than required in terms of economic efficiency objectives, it is possible that this may occur for roads with very low traffic volumes. A potential problem is if both of the following occur at the same time: (i) safety funding requirements for a road are higher than economic efficiency requirements, and (ii) there is a temporary shortage of funds in a particular year. The latter may result from the provisions of section 20(4)(b) dealing with the “manner of funding”. In such an event “economic efficiency” funding requirements will temporarily have to take second place to “safety” requirements. Normally roads should be funded so that the road sector is at the same time both safe and economically efficient. It should also be noted that section 16(5) of the Roads Authority Act does not only refer to “safety” standards but also to international obligations and environmental considerations.

5.26 The second part of section 19(1) obliges the Administration to take account of other sources of funding or non-financial inputs which could play a role affecting the economic viability of any project as seen from the point of view of the funding determination required from the Fund. If such inputs make a particular project or programme economically viable, from a road transport point of view, the Administration would be justified to fund the project to the extent required from the Fund.

5.27 The determination of the amount of funding to ensure an economically efficient road sector depends on the interpretation of the term “economically efficient” *in relation to the road sector*. An explicit definition of an “economically efficient” road sector and its relationship to funding amounts is not included in the principle legislation. This would have been undesirable since a more specific definition in the principle legislation could result in a too prescriptive approach which may in future prevent the Administration from taking into account road transport economic considerations which have not been included in the definition.

5.28 The Act allows content to be given to the term “economically efficient” by making it a mandatory requirement for the Administration, in section 19(2), to “frame” rules and principles, which are practicable and which shall be used by the Roads Authority and other approved authorities, in proposing and motivating roads projects and programmes for funding by the Administration.

5.29 The Administration has the sole power to draw up the section 19(2) rules and principles, but it is obliged to follow such consultation procedures as determined by the Minister. Section 19(2) of the Act is therefore of particular importance and in fact one of the most important duties of the Administration.

5.30 It should be noted that the “amount of funding” is a collective term for the total of amounts allocated for, firstly, different individual road projects and programmes (management of the road network) to the Roads Authority (section 17(1)(a)), and, secondly, various other bodies for the expenditures listed in section 17(1)(b) to (n), including the costs of the Administration itself. The Administration must therefore in effect determine not only the total allocations to each approved authority, but, generally, the funding amounts for individual projects and programmes.

5.31 It should again be noted that the process of funding roads conceptually consists of three separate and sequential phases as defined in section 1(1) of the Act and that section 19 deals with the first of these phases.

5.32 Finally, the concept “road sector” is particularly important since if the efficiency principle were interpreted in the more general context it would have meant that road users should carry the costs of roads which are justified on grounds of non-road transport benefits. Although such benefits should of course be taken into account when evaluating roads projects and programmes, the additional costs and benefits should be analysed outside the road user charging system and be appropriately recovered via general tax payer revenues or whatever instruments are most suitable. The “road sector” should therefore be interpreted as to include road infrastructure which has

primarily been provided for purposes of road transport, vehicle operations and costs related to the regulation of vehicle operations. Although the intention is not to elaborate at length herein, some brief comments may serve to illustrate a general approach to be adopted. The costs associated with controlling environmental damage, for instance, could be regarded as arising from road transport needs and to be recovered from road users. However, the costs of urban roads are often to a large extent dictated by the particular area being served (e.g. an expensive residential area may have roads of a quality which can not be justified on economic grounds from a transport perspective) and such costs should therefore be recovered through municipal rates and taxes and initial sale prices of plots, rather than road user charges.

Section 20 : Funding of Roads Authority and approved authorities

5.33 Whereas the previous section of the Act dealt with the determination of the amount of funding to *in principle* be made available for roads projects and programmes in terms of the objectives of the Act, this section deals with the more practical aspect of how budgets must be submitted by various parties and how the Administration must deal with the applications it receives before making determinations how funds will be allocated to various implementing agencies in the form of short term and long term budgets (referred to as one-year plans and five year plans in the legislation).

5.34 Subsections (1), (2) and (3), respectively, therefore deal with the procedure for submitting budgets, the particulars to be provided and the parties to be consulted.

5.35 Section 20(4) confirms the sequential nature of the roads funding process per the definition in section 1(1) of the Act. The Administration must, firstly, and in accordance with section 20(4)(a) take decisions in principle as to the funding which is justified for individual road projects and programmes. Section 20(4)(b), secondly, requires the Administration to make determinations as to the manner in which it intends to allocate funds in the ensuing and four following financial years.

5.36 The matters to be taken into account by the Administration are covered by sub-paragraphs (i) to (iii) of section 20(4)(b). These indicate clearly that, while the amounts determined under section 20(4)(a) should be covered out of existing funds and funds accruing to the Fund, the Administration may not substantially increase road user charges in any one year and should, moreover, strive to keep road user charges stable in real terms over the long term. This provision, in section 20(4)(b)(ii), is in fact the only empowerment that the Administration has to deviate from the obligation to fund roads at the economically efficient and safe level.

5.37 It must, however, be emphasized that the Administration at most has short term flexibility because over the longer term it has no option but to ensure that economically efficient projects and programmes are funded and that funding is adequate to ensure compliance with minimum standards prescribed by the Minister responsible for transport. and to set road user charges accordingly¹⁰.

5.38 The real implication of requiring the Administration to fund roads, firstly, optimally and in compliance with prescribed standards, and secondly, to maintain stable road user charges, is that the Administration together with the Roads Authority has no option but to adopt a long term planning approach with regard to roads management. This is because it would not be possible to continue for any length of time to “underfund” roads for the sake of maintaining price stability, since the Administration would then not be achieving an economically efficient road sector and would, furthermore, fall further and further behind in being able to do so. Eventually the Administration would have to introduce drastic measures, such as a increasing road user charges sharply or taking large loans, to ensure that roads are optimally funded.

5.39 It should be noted that revenue levels are not necessarily stable if road user charges levels are stable

¹⁰ For purposes of dealing with short term cash flow problems, the Administration does have the option to enter into loan agreements (see sections 15(2)(c) and 16(1)(g)).

because fuel consumption, for instance, can vary from year to year depending on economic conditions and fluctuations in the international oil price. (This type of contingency can, *inter alia*, be catered for by exercising the option in section 17(1)(k) which allows for the establishment of a “reserve fund”.)

5.40 Subsection (5) empowers the Administration to pay funds to approved authorities in instalments and subject to such conditions as it may determine. This may be a useful empowerment to ensure efficient use of funds by implementing authorities. Subsection (6) provides that non-compliance with a funding condition, except section 19(2), does not prevent the Administration from making a funding allocation as necessary to achieve the objects of the Act.

5.41 Subsections (7), (8) and (9) deal with the adjudication of disputes about any funding decision of the Administration. The Minister must make regulations to deal with disputes about section 17(1)(a) funding amount determinations (Roads Authority’s management of the national road network). Note that these cover only the amount of funding and not manner of funding determinations. The regulations shall provide for the constitution of an independent panel of experts to deal with the relevant matter under dispute. Any adjudication by the panel is required to explicitly state the extent to which the decision under dispute gives effect to section 19(1) and (2). The adjudication of disputes about decisions other than determinations in terms of section 20(4)(a) and with regard to section 17(1)(a) expenditure shall be prescribed by the Minister under the general regulations provisions of section 28.

Section 21 : Business plan

5.42 For the purposes of this section the following explanatory notes are provided:

5.43 “Estimates” in relation to expenditure or income submitted in terms of subsections 20(1) and (2) by the Roads Authority and other approved bodies to the Administration are in effect the draft budgets or budget applications of the latter bodies. Estimates will typically contain details of estimated funding requirements for individual projects or programmes (see below), or, where relevant, estimated revenue amounts;

5.44 The business plan represents approved budgets decided by the Administration and contains the details of the final budgets of each authority or body entitled to an allocation. “One year” refers to amounts in a particular current or immediately ensuing year. “Five year” refers to amounts in a five year time frame. The first year of a five year estimate or plan will be the same as the corresponding one year estimate or plan. The business plan also includes the rates of road user charges and the revenues expected to be raised by such charges.

5.45 In terms of subsection (3) amounts taken up in a one year plan are amounts which are approved to be spent by the approved authorities. Subsection (4) allows the Administration to amend a business plan in the course of a financial year, but amendment is subject to the same principles and procedures as provided for in section 20(4) of the Act.

5.46 Subsection (5) requires the Administration to consult with such parties as the Minister, in consultation with the Minister responsible for transport, has determined, before finalising a business plan.

5.47 Subsection (6) provides for the Administration to publish and make available for inspection any business plan.

5.48 It should be noted that the references to “programme” and “project” refer, respectively, to any expenditure amount in a budget or a plan, to expenditure which is of a repetitive or recurring nature (such as personnel costs, general recurring administrative expenses, routine road blading, road re-gravelling, clearing of road reserves, etc.) or expenditure which has a definite start date and end date and which delivers a measurable output the completion of which can be accurately measured and which will not necessarily be repeated (e.g. new road projects, road upgrading projects, major road rehabilitation projects, etc.). A project could be a multi-year project or be completed within a particular year. A maintenance project could be a “project” if it is a once-only or infrequently occurring

expenditure item.

Section 22 : Performance statement

5.49 The purpose of a Performance Statement is to provide a mandatory pre-emptive mechanism of control in which the one party, which may be seen as the “reporting” party (in this case the Administration), periodically (here every three years) informs another party, which can be called the “monitoring” party (in this case the “responsible” Minister), about its intended strategies in regard to specified matters for the ensuing reporting period. The matters to be reported on are specified and restricted to the ways in which certain important duties are intended to be performed by the reporting party and enables the controlling party to monitor the extent to which the important objectives for which the reporting party is responsible are being achieved or are likely to be achieved.

5.50 The Performance Statement to be submitted by the Administration to the Minister therefore places the Minister in a position to assess at an early stage: (i) whether the Administration will effectively discharge its obligations in terms of the Act, and (ii) the possible implications of the intended strategies of the Administration for affected parties and the public in general. The strategies of the Administration typically affect matters such as funding allocations to various bodies, the levels of road user charges and the solvency of the Road Fund, all of which are measures of the performance of the Administration in relation to the objectives in the Act. The Performance Statement is therefore an instrument which, on the one hand, provides for pre-emptive control measures to be implemented, and, on the other hand, earlier and more informed planning with regard to matters and programmes affected by the strategies of the Administration. It is a forward-looking rather than backward-looking instrument of control (compared to the annual report, accounting and auditing, etc.).

5.51 In terms of subsection (1) the Administration must submit a draft Performance Statement to the Minister two months before the commencement of every third financial year and after consultation with parties directed by the Minister. The matters to be covered in a Performance Statement are listed in paragraphs (a) to (e).

5.52 Subsection (2) makes provision for the Minister to make amendments to the Performance Statement in consultation with the Administration. The performance statement may be amended from time to time but at least every three years. A performance statement shall be published and be available for inspection.

6. PART IV : FINANCIAL AND GENERAL PROVISIONS

Section 23 : Financial year

6.1 The board shall determine the financial year of the Administration.

Section 24 : Accounting and auditing

6.2 The provisions of this section are formulated in such a way as to oblige the Administration to disclose fairly the financial status of the affairs of the Administration and the Fund and to show: (i) the Fund and the Administration separately, and (ii) appropriations by Parliament and donations.

6.3 The Annual statements are subject to annual independent audit by a registered auditor appointed in consultation with the Auditor-General.

Section 25 : Annual report

6.4 The annual report must be submitted to the Minister six months after the end of the financial year, contain specified information as in subsection (1), namely:

- (a) particulars of projects and programmes relating to the management of the road user charging system;

- (b) an assessment by the Administration of the Administration's performance in relation to its performance statement; and
- (c) such other matters as the Minister may require.

6.5 In subsection (4) provision is made that the annual report shall be tabled in the National Assembly together with the business plan, the Performance Statement, audited financial statements and report of the Auditor-General within 28 days after the receipt of the last outstanding document.

Section 26 : State land may be made available to the Administration

6.6 The Minister may make state land available to the Administration subject to terms and conditions for the performance of the functions of the Administration.

Section 27 : Delegation of powers

6.7 The Minister may delegate, subject to conditions regarded as appropriate, in writing delegate powers to the board or the chief executive officer. The power to make regulations may not be delegated. The delegated powers or other powers under the Act may be further delegated by the board or chief executive officer but delegation does not prevent the exercise of the relevant power by the original holder thereof.

Section 28 : Regulations

6.8 This section provides for regulations which may be made by the Minister, in consultation with the Minister responsible for Transport, after consultation with the Administration. The regulations may relate to:

- (a) all matter which in general are required or permitted to be prescribed;
- (b) the principles to be applied in the calculation and imposition of road user charges;
- (c) the collection of road user charges;
- (d) the manner in which the Administration may execute or perform any power, duty or function;
- (e) the management and control of the Fund;
- (f) the procedures which may be followed in connection with complaints other than those under section 29(7) of the Act; and
- (g) any other matter to achieve the objects of the Act.

Section 29 : Transitional provisions

6.9 In subsection (1) provision is made for the transfer by the Minister responsible for transport to, in consultation with the Minister, transfer assets to the Administration. The transfer shall be by notice in the *Gazette*.

6.10 Subsection (2) provided for loans and donations to, subject to the consent of the party concerned, be transferred to the Administration.

6.11 In terms of subsection (10) staff members (i.e. members of the Public Service) may be transferred to the Administration, but subject to the consent of the staff member concerned.

6.12 Subsection (11) provides for the Department of Transport to be construed as the Roads Authority until Roads Authority has come into operation.

6.13 Subsection (12) provides for the Minister, in consultation with the Minister responsible for transport, until such time as the board has been constituted, to exercise the powers of the board under sections 1(2) and 21. (Approval to be eligible for funding from Fund and finalising business plan.)

Section 30 : Short title and commencement

6.14 Subsection (1) is a standard formulation.

6.15 In subsection (2) provision is made for different sections of the Act to be implemented on different dates.

**ANNEXURE A : ROAD FUND ADMINISTRATION ACT, 1999 (ACT NO. 18 OF 1999)
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)

ARRANGEMENT OF SECTIONS**PART I
PRELIMINARY PROVISIONS**

Section

1. Definitions

**PART II
THE ROAD FUND ADMINISTRATION**

2. Establishment of the Road Fund Administration
3. Objects of the Administration
4. Board of directors
5. Disqualification for appointment as director
6. Tenure of office of directors
7. Vacation of office and filling of vacancies
8. Alternate directors
9. Meetings of the board
10. Disclosure of interest
11. Allowances
12. Committees of the board
13. Restriction of liability
14. Chief executive officer and other employees
15. Functions of the Administration

**PART III
THE ROAD USER CHARGING SYSTEM**

16. Establishment of the Road Fund
17. Utilization of the Fund
18. Determination of road user charges
19. Determination of amount of funding
20. Funding of Roads Authority and approved authorities
21. Business plan
22. Performance statement

**PART IV
FINANCIAL AND GENERAL PROVISIONS**

23. Financial year
24. Accounting and auditing
25. Annual report
26. State land may be made available to the Administration

- 27. Delegation of powers
- 28. Regulations
- 29. Transitional provisions
- 30. Short title and commencement

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;
- (ii) 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;

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- (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.
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(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.

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