

STANDARD TEMPLATE FOR LEGISLATION TO SET UP AN AUTONOMOUS ROAD AUTHORITY

Source: This template was prepared for the Southern Africa Transport and Communications Commission (SATCC) in 1998. It was prepared by Consilium Legis (PTY) Ltd., Pretoria, South Africa. It is a comprehensive template that covers the setting up of a road fund, as well as a road authority.

This is a comprehensive template that could be used as the basis for drafting legislation for a specific country. It not only covers road management, but also deals with road financing and the regulation of roads and road transport.

ARRANGEMENT OF SECTIONS

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CHAPTER I: DEFINITIONS, SCOPE AND APPLICATION

Definitions

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

“Agency” means the Roads Agency established by section 35;

“building restriction area” means an area of land (excluding land in an urban area) -

(a) situated alongside a road within a prescribed distance from the boundary of such road; or

(b) situated within a prescribed distance from any point of intersection;

“Chief Executive Officer” means the person appointed in terms of section 48;

“financial plan” means the plan to source funds and finance roads contemplated in section 34 and prepared by the Fund Director;

“force account” means the construction, upgrading, rehabilitation and maintenance of roads by the public sector;

“Fund” means the Road Fund established by section 7;

“Fund Director” means the person appointed in terms of section 17;

“investment and release strategy” means the investment and release strategy referred to in section 61 of the Investment in Transport Act, 19..;

“local authority” means a district, city or town authority providing or coordinating services which may include roads;

“Minister” means the Minister responsible for roads;

“Ministers Committee” means the Committee established by section 6;

“operational plan” means the road network management plan contemplated in section 56 and prepared by the Chief Executive Officer;

“Permanent Secretary/Principal Secretary/Secretary/Director-General means the Permanent Secretary/ Principal Secretary/Secretary/Director-General responsible for roads and includes the personnel under his or her control;

“prescribed” means prescribed by the Minister by regulation under section 76;

“report” means the annual report prepared by the Road Fund board in terms of section 20 or the annual report prepared by the Roads Agency board in terms of 52, as the context indicates;

“Regional Trunk Road Network” means the network of regional roads as defined from time to time by the SATCC Committee of Ministers;

“road” or “roads” means a primary, secondary or tertiary road commonly used by the public or to which the public has access or a route and includes -

- (a) any bridge, causeway, culvert, dam, ditch, drain, embankment, fence, ferry, ford, pontoon or other work in the line of such road; and
- (b) in addition to the road or route -
 - (i) the land of which the road or route consists or over which the road reserve in question extends;
 - (ii) anything on that land forming part of, or connected with, or belonging to the road or route; and
 - (iii) land acquired for the construction of a connection between one road or route and another road or route;

“roads authorities” means the Agency and any other authority of the second or third tier of government responsible for roads;

“Roads Agency board” means the board of the Roads Agency appointed in terms of section 42;

“Road Fund board” means the board of the Road Fund appointed in terms of section 12;

“State” means the Republic/Kingdom of ...;

“toll plaza” means a structure on a toll road where toll is payable under this Act, or any electrical or mechanical device on a toll road for recording the liability to pay toll, or any combination of such a structure and such a device and includes a toll gate;

“toll road” means any road or a portion thereof which has been declared a toll road under section 25(1)(b) and on which all or some categories of road users must pay a road user charge as determined by the Road Fund board and published by way of notice in the *Gazette* under section 25(3); and

“user charge” means any charge imposed on a user for the use of the road network, including weight-distance charges, road tolls, bridge and ferry tolls, international transit fees, fuel levies, transit charges, abnormal load charges, fines payable by any person to the Fund in terms of this Act or any other law, congestion charges, but excluding that portion of such charge which comprises a general revenue component and which is paid to the exchequer or any other revenue Fund as a tax.

Scope and application of Act

2. (1) Subject to subsection (2), this Act applies to the management and financing of all roads in the Republic/Kingdom, except as otherwise provided in this Act.

(2) If a second or third sphere of government has legislative competence in respect of roads under the control of that sphere, the Minister must promote the application of the management and financing principles specified in this Act by those levels in the manner specified in section 5.

(3) This Act binds the State.

Objectives of Act

3. The objectives of this Act are, in the public interest, to -

- (a) allocate responsibility between the Road Fund board and the Roads Agency board and establish clear lines of authority;
- (b) provide for private and public sector representation on the Road Fund board and the Roads Agency board on the basis of responsibility, interest and expertise;
- (c) lay down road management and financing principles for all roads based on sound business practice, managerial accountability, transparent procedures and efficient and realistic planning;
- (d) provide a comprehensive financing framework for all roads to ensure an adequate source of financing and a stable flow of funds;
- (e) promote harmonized road management between all roads authorities in the Republic/Kingdom;
- (f) establish transparent procedures for allocating and disbursing funds between roads authorities;
- (g) reduce the cost of roads to the exchequer by -
 - (i) establishing the user pays principle to ensure that road users contribute to the full costs of maintaining roads and progressively contribute to the full costs of providing roads;
 - (ii) allocating revenues paid for road use to road operations;
 - (iii) pricing roads at a level which improves the economic efficiency of road transport;
 - (iv) encouraging private investment and financing of roads;
 - (v) contracting road operations out to the private sector and progressively phasing out the use of force account; and

- (vi) enhancing the technical efficiency and cost-effectiveness of road operations;
- (h) manage impacts of proposed road development in a manner which is environmentally-sensitive;
- (i) facilitate regional planning and collaboration in developing the Regional Trunk Road Network, setting harmonized technical standards and sharing resources; and
- (j) promote the use of the expertise available to the region where local expertise is non-existent or insufficient to realise the objectives of this Act and build existing contracting and consulting capacity in the Republic/Kingdom by utilising such expertise.

Application of Investment in Transport Act

1. This Act applies in conjunction with the provisions of the Investment in Transport Act, 19.. , where applicable.

Role of Minister

5. (1) The Minister must develop and regularly review policy in respect of the nation's roads to ensure that the objectives referred to in section 4 are realized.

- (2) The Minister must-

- (a) publish the complete national roads policy or relevant extracts thereof in the *Gazette*, as well as any subsequent revisions of the policy, for public notice; and
- (b) provide the board with a completed policy statement and any subsequent revisions thereof.

- (3) The Minister must, assisted by the Permanent Secretary/Principal Secretary /Secretary/Director-General, ensure that the policy is implemented by exercising the powers and executing the functions vested in him or her in terms of this Act by -

- (a) monitoring progress achieved with the implementation of road management and financing policy, the impact on other transport modes and the promotion of integrated transport;
- (b) promoting the development of harmonized regional technical standards and financial practices; and
- (c) recommending policy revisions to ensure that the objectives of this Act are realized.

Ministers Committee

6. (1) A committee is hereby established comprising -

- (a) the Minister, who is the chairperson;

- (b) the Minister of Finance;
- (c) the Minister responsible for provincial and local government affairs; and
- (d) any other Minister responsible for a matter falling within the functions of the committee.

(2) The Committee must meet as and when required, but at least twice per year.

(3) The role of the Committee is to -

- (1) consider recommendations from the Road Fund board and the Roads Agency board regarding the allocation of parliamentary appropriations between roads authorities for the purpose of preparing annual budget votes;
- (2) consider recommendations from the Road Fund board and the Roads Agency board regarding the introduction of new charging instruments; and
- (3) provide a forum for policy level co-ordination on the harmonization of road management practices between all roads authorities.

Note:

Each Member State should adapt these provisions according to individual circumstances using as a basis the need to involve all Ministers whose portfolios impact on the roads function. The provisions also allow flexibility through the inclusion of any Minister who may be responsible for a matter falling within the functions of the Committee.

CHAPTER II: ROAD FUND

Establishment of Road Fund

7. A Road Fund is hereby established as a juristic person to -

- (a) serve as a single channel for funds derived from user charges;
- (b) provide a transparent mechanism for unbiased allocation to and disbursement of funds derived from user charges to all roads authorities;
- (c) provide a transparent mechanism for the disbursement of funds appropriated by Parliament to all roads authorities;
- (d) ensure that financial discipline and accountability are entrenched; and
- (d) exercise the functions entrusted to it by this Act.

Management of Fund

8. (1) The affairs of the Road Fund are managed by a Road Fund board appointed in terms of this Act.

(2) The Road Fund board is assisted by such staff as may be appointed in terms of section 19.

Role of Road Fund Board

9. The role of the Road Fund board is to -

- (a) assume stewardship over the reform of road financing to realize the objectives of this Act;
- (b) guide the financial operations of the Fund;
- (c) evaluate the technical and financial inputs derived from roads authorities to ensure balanced road financing decisions;
- (d) manage public monies entrusted to it by Parliament and monies paid by road users for road use; and
- (e) balance the interests of all roads authorities through the application of sound economic principles.

General functions and powers of Road Fund board

10. (1) The Road Fund board performs its functions and exercises its powers with reference to the applicable provisions of the Investment in Transport Act, 19.., and in particular the investment approach and investment methodology set out in Chapters II and III respectively.

(2) The functions of the Road Fund board are to -

- (a) approve the financial plan prepared by the Fund Director in terms of section 34(2) and guide its implementation;
- (b) determine user charges and adjust charging levels subject to Ministerial approval to ensure an adequate and sustainable flow of funds to road operations;
- (c) declare toll roads and authorise the collection of tolls by the Roads Agency or any other person;
- (d) annually adopt a formula for the unbiased allocation and disbursement of funds derived from road user charges between the Agency and other roads authorities and recommend its approval by the Ministers Committee in terms of section 28;
- (e) allocate and disburse funds derived from user charges to roads authorities from the Road Fund;
- (f) review fuel levies and consider new charging instruments in terms of section 32;
- (g) verify that the Fund is financially-sound and that the income is adequate to cover expenditure;

- (h) advise the Minister on new or additional revenue sources to supplement funds available for roads and methods to collect such funds;
- (i) appoint the Fund Director in terms of section 17 and oversee the appointment of staff of the Fund in terms of section 19;
- (j) engage auditors to audit the Fund in terms of subsection (3)(h);
- (k) in general, give directives to the Fund Director in order to give effect to the objectives of this Act; and
- (l) advise the Minister, upon request, with regard to any matter related to the implementation of this Act.

(3) For the purpose of subsection (2), the Road Fund board has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions, including the power to -

- (a) collect a user charge in terms of section 25(1)(a);
- (b) raise loans on behalf of the Fund;
- (c) institute and conduct civil proceedings with regard to all matters relating to its functions;
- (d) sue or be sued in its own name;
- (e) enter into contracts;
- (f) charge or fix terms for services and information supplied by it;
- (g) appoint agents and attorneys; and
- (h) engage consultants and auditors.

(4) The Road Fund board may, in writing, delegate any of the powers referred to in subsection (3) to the Fund Director.

Composition of Road Fund board

11. (1) The Road Fund board comprises representatives from the private and public sectors appointed by the Minister.

(2) The Minister must, subject to section 12 appoint members of the Road Fund board representative of the private and public sectors in a ratio which ensures that the majority of the members are representative of private sector interests in accordance with the provisions of subsections (3) and (4).

(3) The Minister must appoint members of the Road Fund board representative of private sector interests which include -

- (a) at least three but not more than four persons with proven expertise in commercial banking who are able to advise the Road Fund board, amongst others, on financing options and financial structuring; and
- (b) not more than two persons with proven expertise in their field of competence and, respectively, representative of -
 - (i) transport service providers, and able to advise the Road Fund board on, amongst others, the needs of the road transport industry, the flow of passengers and goods, facility needs and law enforcement; and
 - (ii) transport users, and able to advise the Road Fund board on, amongst others, the general needs of transport users, goods and commodity flows, import and export needs and logistical requirements.

(4) The Minister must appoint members of the Road Fund board representative of public sector interests which include -

- (a) one person nominated by the Minister of Finance to advise the Road Fund board regarding fiscal policy, public funding priorities and availability of funds; and
- (b) the Permanent Secretary/Principal Secretary/Secretary/Director-General or his or her nominee.

(5) The Fund Director must participate in the deliberations of the Road Fund board by virtue of his or her position but has no vote.

Note:

The emphasis in the composition of the Road Fund board is on financial expertise as opposed to the Roads Agency board where the emphasis of the board's composition is on roads management expertise.

Appointment of Road Fund board

12. (1) The Minister must appoint the members of the Road Fund board by -

- (a) calling for nominations for members of the Road Fund board by publishing a notice in the Gazette and one newspaper circulating countrywide;
- (b) for the purpose of this subsection, specifically requesting nominations from appropriate stakeholders which may include the -
 - (i) bus passenger transport industry;
 - (ii) taxi industry;
 - (iii) road freight transport industry;
 - (iv) national chamber of commerce;

- (v) national farmers association;
 - (vi) exporters' association;
 - (vii) logistics industry; and
 - (viii) tourism industry;
- (c) publishing the short-list of nominations by notice in the *Gazette* and one newspaper circulating countrywide;
 - (d) in the notice referred to in paragraph (c), setting a date by which persons wishing to object to or comment on the proposed appointees may do so; and
 - (e) taking into account comments or objections received in respect of proposed appointees.

Note:

As a supplementary measure, provision could also be made for candidates to be interviewed through a process of public hearings. This procedure will have the advantage of increasing the transparency of the appointment process. The latter is of particular importance in view of the fact that a member of the board will assume collective responsibility with his / her colleagues for substantial public assets.

(2) The Minister must by notice in the *Gazette* and one newspaper circulating countrywide, publish a list of members of the Road Fund board within one month after their appointment.

(3) The Minister must designate a public official as the chairperson and another as deputy chairperson until the Road Fund board has met in terms of section 15 and is able to nominate its own presiding officers from among its members.

(4) The Road Fund board must endeavour to nominate persons knowledgeable in corporate management and financing as chairperson and deputy chairperson.

(5) The Minister must appoint the board's nominees as chairperson and deputy chairperson respectively.

(6) The Minister may, with due cognisance of the need to retain majority private sector membership of the Road Fund board and in order to facilitate improved co-ordination between public sector representatives on the board and overall effectiveness of the board or enhanced representativeness of a stakeholder group, increase membership of the board.

(7) If the Minister acts in terms of subsection (6), he or she must, upon expiry of the period of the office of the members referred to in that subsection, replace those members by requesting nominations from those stakeholder groups listed in subsection (1)(b) whose nominees were not appointed to the previous Road Fund board.

Disqualifications

13. No person is eligible to be a member of the Road Fund board if he or she -

- (a) is or becomes a member of Parliament, a provincial legislature or a council of a local authority;
- (b) is or becomes disqualified to serve as a director in terms of the provisions of the Companies Act, 19..;
- (c) has or acquires any interest, whether monetary or otherwise, in any road-related enterprise, which may conflict or interfere with the proper performance of his or her duties as a director; or
- (d) has at any time been or is convicted, whether in the Republic/Kingdom or elsewhere of theft, fraud, forgery or perjury.

Period of office of members of Road Fund board

14. (1) With the exception of the members of the Road Fund board referred to in section 11(4), a member of the board holds office for a period determined by the Minister, which period may not exceed 3 years.

(2) For the purpose of subsection (1), the Minister must give due regard to the need to ensure continuity in the membership of the Road Fund board and to this end must differentiate between the periods of office of members of the board: Provided that such periods are disclosed to the member at the time of appointment to the board.

(3) A member of the Road Fund board, including the chairperson, deputy chairperson and the Chief Executive Officer must vacate his or her office -

- (a) upon expiry of his or her term of appointment;
- (b) if he or she is incapacitated by physical or mental illness;
- (c) if his or her estate is sequestrated;
- (d) if he or she becomes disqualified to serve as a member in terms of the provisions of the Companies Act, 19..; or
- (e) if he or she is nominated as a candidate for election as a member of Parliament, a provincial legislature or a council of a local authority.

(4) The Minister may, subject to subsection (5) -

- (a) dismiss a member of the Road Fund board if such member -
 - (i) fails to perform his or her duties diligently or efficiently;
 - (ii) is unable to perform his or her duties because of mental illness or disability; or
 - (iii) has been absent without the permission of the chairperson from three consecutive meetings of the Road Fund board, without good reason; or

(b) substitute such member in the case of a member in the employ of the State.

(5) The Minister may not dismiss a member of the board before -

- (a) he or she has served a notice on such member setting out the reasons for his or her dissatisfaction with the member's performance;
- (b) the member concerned has been allowed a fair hearing before an independent and impartial panel appointed by the Minister in terms of subsection (6); and
- (c) due consideration of the recommendations made by such a panel after the hearing referred to in paragraph (b).

(6) The Minister must, before appointing the panel referred to in subsection (5) -

- (a) publish a notice of his or her intention to appointment such a panel in the *Gazette* which-
 - (i) lists the names of the persons to be appointed to the panel; and
 - (ii) allows a reasonable time for comments to be submitted by interested parties; and
- (b) give due consideration and reply in writing to any comment submitted in terms of paragraph (a)(ii).

(7) If the Minister dismisses a member of the board, despite a recommendation by the panel that such member should not be dismissed, the decision is subject to review by a court, which may -

- (a) confirm the decision of the Minister; or
- (b) set aside the decision of the Minister and make any decision it sees fit, including a decision that the dismissed member be reinstated or that the dismissed member be paid appropriate compensation.

(8) A member of the Road Fund board may resign on one month's written notice to the Minister.

(9) The Minister must fill vacancies on the Road Fund board within 3 months.

(10) Subject to section 16, a member is appointed on such terms and conditions and at such rate of remuneration as the Minister may determine in the letter of appointment.

Meetings of Road Fund Board

15. (1) The first meeting of the Road Fund board must be held at a time and place determined by the Minister and thereafter meetings must be held at times and places determined by the Road Fund board.

(2) The Road Fund board must elect a chairperson and deputy-chairperson at its first meeting.

(3) A quorum for any meeting of the Road Fund board is a majority of the members appointed.

(4) A decision of the majority of the members of the Road Fund board present at a meeting is a valid decision provided there is a quorum.

(5) In the case of an equality of votes the chairperson has a casting vote and must exercise such vote to break a deadlock.

Conditions of service of members of Road Fund board

16. (1) A member of the Road Fund board, other than the Fund Director or a person who is in the full-time employment of the State or a local authority, is appointed on the conditions of service including conditions relating to the payment of remuneration and allowances for travel and subsistence, as may be prescribed by the Minister upon advice of the Fund Director.

(2) Conditions of service determined under subsection (1) may differ according to whether the person concerned serves on the Road Fund board because of his or her office or on a full-time or part-time basis or in a professional capacity.

(3) The Minister determines the salary, honorarium for attending meetings and rates of compensation for travel and subsistence of a director, but a director who is in the paid employment of the State may only receive a honorarium and compensation for travel and subsistence expenses related to his or her duties as a director.

Note:

It should be noted that the Minister only plays a role in the appointment of board members (and the setting of remuneration and service conditions) until the Minister no longer holds the majority of the shares in the port company. Once the latter event occurs, each MSs companies legislation applies and the Minister will, if he or she retains any shares, exercise the same rights in the appointment of board members and the setting of remuneration as any other shareholder.

Appointment of Fund Director

17. (1) The Road Fund board must, subject to the provisions of subsection (3), appoint a Fund Director within three months after the date of entry into force of this Act.

(2) For the purpose of subsection (1), the Road Fund board must invite applications for the post of Fund Director by publishing an advertisement in one newspaper circulating country-wide.

(3) Any person appointed to the post of Fund Director must -

- (a) be registered as a member of the professional body representing chartered accountants;
- (b) have at least 5 years appropriate experience;
- (c) be a ... national, unless expressly exempted by the Minister from this requirement; and
- (d) not have been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or perjury.

(4) The appointment of the Fund Director is subject to the conclusion of a performance contract between such person and the Road Fund board.

(5) An appointment in terms of this section is for a period of five years, whereafter the post of Fund Director must be re-advertised in the manner specified in subsection (2).

(6) A serving Fund Director may apply for re-appointment after the expiration of the period of appointment referred to in subsection (5).

(7) A Fund Director holds office on such terms and conditions, including remuneration and allowances, as the Road Fund board determines in writing.

(8) The provisions of this section do not exclude the provisions of ... (insert reference to applicable labour legislation) relating to procedures and remedies in respect of the dismissal of an employee.

Functions, duties and powers of Fund Director

18. (1) The functions and duties of the Fund Director are to -

- (a) supervise the financial operations of the Fund by -
 - (i) keeping accounting records to represent the state of affairs of the Fund in respect of each account referred to in section 26;
 - (ii) monitoring the flow of funds to and from the Fund to ensure adequate liquidity to support road operations; and
 - (iii) preparing the annual financial statements of the Fund for submission to the Road Fund board;
- (b) disburse funds to the Agency or any other roads authority as mandated by the Road Fund board;
- (c) review, at such intervals as the director deems necessary, the utilization of funds by the Agency or any other roads authority to verify that funds have been utilized for their stated purpose;
- (d) advise the Road Fund board on the introduction of user charges, recommend an equitable and transparent charging methodology and propose a formula for the adjustment of charges;
- (e) advise the Road Fund board on the need for new charging instruments and the optimal level of fuel levies;
- (f) manage the staff of the Fund;
- (g) prepare the financial plan and updates thereof in the manner specified in section 34;

- (h) prepare a monthly report to the Road Fund board regarding the income and expenditure of the Fund;
- (i) liaise with the Chief Executive Officer regarding any matter affecting the Agency; and
- (j) report regularly to the Road Fund board and advise the board, upon request, with regard to any matter related to the management and administration of the Fund.

(2) For the purpose of subsection (1), the Fund Director has the power to -

- (a) open a bank account or accounts with a registered financial institution in the name of the Fund and deposit or withdraw monies from such account or accounts;
- (b) invest money not immediately required for the purpose of the Fund in a sound commercial manner or as directed by the Road Fund board;
- (c) appoint staff, in the manner specified in section 19;
- (d) enter into contracts;
- (e) prosecute claims in favour of the Fund, whether under contract or otherwise;
- (f) engage consultants and auditors;
- (g) appoint agents and attorneys; and
- (h) perform any act incidental to the effective performance of his or her functions and duties.

(3) The Fund Director may in writing delegate any power referred to in subsection (2) to an employee of the Fund, but is not thereby relieved of a duty or responsibility assigned to him or her in terms of this Act.

Appointment of staff

19. (1) The Fund Director may in consultation with the Road Fund board appoint such person or persons as staff as he or she deems fit for the proper discharge of the functions of the Fund.

(2) Any appointment in terms of this section -

- (a) must be in accordance with the provisions of the financial plan which has been approved by the Road Fund board; and
- (b) is subject to such remuneration and conditions of service as the Road Fund board may approve, upon recommendation of the Fund Director.

(3) For the purpose of subsection (1), the Fund Director may request the Permanent Secretary/Principal Secretary/ Secretary/Director-General to designate personnel of the Ministry/Department to be transferred to the Road Fund, and, where this occurs, such transfer must be subject to the same conditions of service and without loss of any benefits.

Annual report

20. (1) The Road Fund board must, not later than three months after the close of their financial year, submit an annual report to the Minister, based on reports by the Fund Director regarding the affairs of the Fund, providing:

- (a) an overview of the affairs of the Fund;
- (b) an assessment of the adequacy of road funding, the degree to which sources for road financing have been exploited and the cost of road operations to the exchequer has been reduced;
- (c) a report on progress achieved with co-ordination between roads authorities and regional co-operation;
- (d) the audited financial statements of the Fund; and
- (e) generally, a report on the degree to which the objectives of this Act have been realized and the levels of compliance with the provisions of the Act.

(2) The Minister must table the reports in Parliament -

- (a) within 14 days if Parliament is in ordinary session; or
- (b) within 14 days after the commencement of a session of Parliament if Parliament is not in ordinary session.

Expenditure and financial year

21. (1) The costs of the operations of the Road Fund, including its administrative expenditure, are defrayed in accordance with the financial plan, from the Fund.

(2) The financial year of the Fund must be determined by the Road Fund board.

Accounting and auditing arrangements

22. (1) The Fund must keep accounting records as are necessary in accordance with internationally accepted accounting practice to reflect fairly the state of affairs and business of the Fund and to explain the transactions and financial condition of the Fund.

(2) The Fund must be audited by independent auditors appointed by the Road Fund board.

CHAPTER III: FINANCING PRINCIPLES AND PROCEDURES

Road financing principles

23. The Road Fund board appointed in term of this Act must apply the following principles in financing the provision and operation of roads -

- (a) funds must be allocated to operations on the basis of proven cost efficiency;

- (b) financing of new roads must take into consideration projected future maintenance costs;
- (c) user charges must accurately reflect the price of road use and avoid price distortion;
- (d) user charges must be non-discriminatory;
- (e) user charges and other charging instruments must be separate from other taxes, charges or fees imposed on road users and may not include a component which is not related to road use other than the cost of administering the charge;
- (f) simple and transparent administrative procedures must be applied to ensure that full account can be given at any time to road users of -
 - (i) the costs of road use;
 - (ii) the manner in which and purpose for which funds generated from user charges are applied; and
 - (iii) the charging instruments applied;
- (g) charging methods must be applied which can be efficiently administered and which limit loss through evasion, avoidance or leakage; and
- (h) financing decisions must be justifiable on the basis of available revenues and be in accordance with the approved investment and release strategy.

Fund revenue

24. (1) The revenue of the Fund comprises money derived from -

- (1) user charges;
- (2) appropriations by Parliament for all road authorities;
- (3) interest on the Fund's cash balances or otherwise from money invested as contemplated in section 18(2)(b); and
- (4) any other source in terms of the provisions of any Act.

(2) For the purpose of subsection (1)(a), user charges include any toll levied by a public toll operator and any portion of a toll levied by a private operator which does not form part of such private operators' income in terms of an appropriate contract.

Note:

Member States may wish to exclude certain road user charges from being dedicated to the Road Fund, for example, property tax increments for local roads in urban areas and urban area parking fees.

Channelling user charges to Fund

25. (1) The Road Fund board may, after consultation with the Roads Agency board and with the concurrence of the Minister -

- (1) impose a user charge for any purpose or amend a charge so imposed and collect such charge from road users or authorise any other person to collect such charge in the manner which the Road Fund board deems fit; and
- (2) declare a road or portion thereof to be a toll road, to be operated by the Roads Agency through the collection of tolls from road users at toll plazas erected, operated and maintained for that purpose or by any other person authorised by the board in terms of an agreement concluded pursuant to the Investment in Transport Act, 19....

(2) In exercising its power to impose user charges, provided in subsection (1)(a), the Road Fund board must have due regard for -

- (a) the objectives of this Act;
- (b) the road financing principles contemplated in section 23; and
- (c) regional decisions in respect of the harmonization of national user charging systems.

(3) The Road Fund board may not act in terms of subsection (1), without prior publication of a notice in the *Gazette* which must invite public comment and specify -

- (a) in the case of a user charge other than a toll -
 - (i) the amount or amounts of the charge, subject to a minimum which may be prescribed;
 - (ii) the classes of persons or vehicles to be charged with reference to the amount of the charge;
 - (iii) the classes of persons or vehicles, if any, to be exempted from the charge;
 - (iv) the manner in which the charge is to be paid; and
 - (v) the date on which the levying of the charge is to commence.
- (b) in the case of a toll -
 - (i) the portion of the road to be tolled;

- (ii) the amount or amounts of the toll, subject to a minimum which may be prescribed;
- (iii) the classes of persons or vehicles to be tolled with reference to the amount of the toll;
- (iv) the classes of persons or vehicles, if any, to be exempted from the toll;
- (v) the hours, if any, during which no toll will be levied;
- (vi) the approximate location of toll plazas; and
- (vii) the date on which the levying of the toll is to commence.

(4) A notice referred to in subsection (3), must be published at least 90 days prior to the date on which the levying of charges or tolls is to commence and allow not less than 30 days for comment.

(5) The Road Fund board must review any comment which is received and report to the Minister on -

- (a) the manner in which comment has been accommodated; or
- (b) if comment has not been accommodated, specify the reason therefor.

(6) The Minister may, if he or she is satisfied that the board has not complied with subsection (2) in determining or amending a road user charge, direct the Road Fund board to -

- (a) amend the charge; or
- (b) submit revised recommendations in relation to such charge.

(7) The Road Fund board may at any time amend a notice published in terms of this section.

(8) The provisions of subsections (4), (5) and (6) apply to any amended notice.

Fund accounts

26. (1) For the purpose of allocating the revenue of the Fund, the Fund Director must establish different accounts for different sources of revenue which may include -

- (1) a user charges account, which comprises monies derived from charges for the use of the network including weight-distance charges, transit charges, abnormal load charges and congestion charges;
- (2) a fuel levy account, which comprises monies derived from fuel levies;
- (3) a toll account, which comprises monies derived from road, bridge and ferry tolls and includes interest on investment of such monies;
- (4) an appropriation account, which comprises monies derived from Parliamentary appropriations;

- (5) a capital account, which comprises monies derived from interest on the Fund's cash balances or derived from investments; and
- (6) a fee and fine account, which comprises monies derived from prescribed license fees and fines payable in terms of this Act or any other law.

(2) Monies in the user charges account referred to in subsection (1) must be separately accounted for in respect of the particular use from which the monies are generated.

(3) For the purpose of subsection (1)(c), the toll account must provide for a separate account for monies received by way of toll or in any other way in respect of each toll road to be utilized in accordance with the provisions of section 29(3).

(4) The revenue of the Fund referred to in subsection (1)(a), (b), (c) and (f) must be paid directly to the Fund at regular intervals and for this purpose, the Minister must, upon recommendation of the Road Fund board and subject to subsection (5), prescribe the intervals at which and manner in which such revenue is paid to the Fund.

(5) The Minister must, in consultation with the Minister of Finance, prescribe the regular intervals at which and manner in which monies referred to in subsection (3) must be paid directly to the Fund.

(6) The Minister may by notice in the *Gazette*, upon recommendation of the Road Fund board, and after consultation with the Minister of Finance, direct that monies derived from fees charged for the issuing of any licence relating to the motor vehicles, be paid to the Fund.

Application for funds

27. (1) A roads authority must, at least four months before the commencement of each financial year in such form as may be determined by the Fund Director submit a funding application, containing a road network management plan in respect of the ensuing financial year and such further financial years as may be determined by the board, with information on -

- (a) each project or programme which a roads authority proposes to undertake, including the estimated total cost of that project or programme, the cost of contingencies and administrative expenditure relating to such project or programme;
- (b) each project approved in any previous financial year and which is to be continued in the next financial year or in any ensuing financial years;
- (c) the estimated administrative expenditure of the road authority, including the cost of contingencies, to the extent that such expenditure was not included in the cost of a project or programme referred to in paragraph (a); and
- (d) any factors, including environmental factors, which may affect the implementation of the plan and the measures which will be taken to ensure execution of any such plan.

(2) The Road Fund board must, after consideration of every plan submitted to it in terms of subsection (1), determine the amount of funding to be made available to a roads authority in terms of the approved fund allocation formula.

(3) Any amount of funding due to a roads authority may be paid to it by the Fund Director in such instalments and subject to such conditions as the Road Fund board may determine.

(4) For the purposes of subsection (3), the Fund Director may, with the approval of the Road Fund board-

- (a) impose a requirement that funds may only be disbursed upon certification that work has been executed according to specification; or
- (b) permit the prior disbursement of funds, subject to subsequent technical and financial audits as contemplated in section 32, to verify that work has been executed according to specification in accordance with an approved road network management plan.

Allocation of funds derived from user charges

28. (1) The Fund Director must annually submit a formula for approval to the Road Fund board providing for the unbiased allocation of funds derived from road user charges, other than tolls, between the Agency and other roads authorities.

(2) The Fund Director must develop the formula with reference to -

- (a) the need for a balanced overall road network condition;
- (b) projected revenue to be derived from user charges in the financial year;
- (c) operational priorities for road operations as determined by the Road Fund board;
- (d) the equitable division of funds between roads authorities; and
- (e) road network management plans and funding applications submitted by all road authorities.

(3) The Fund Director must submit the formula to the Road Fund board for approval, and submission to and approval by the Minister.

(4) The Minister must approve the formula in consultation with the Minister or Ministers responsible for the affairs of other roads authorities.

(5) The Road Fund board may, with the approval of the Minister, amend the formula in response to the findings of a technical or financial audit of the affairs of a roads authority conducted by the Fund as contemplated in section 32..

Note:

These provisions create a mechanism whereby funds derived from user charges, which are collected for the use of various roads can be allocated. This is required as all user charges are channelled to a single point, i.e. the Fund, and should thereafter be disbursed.

The provisions seek to avoid a situation where funds are disbursed merely using a simple allocation formula, with a roads authority merely accounting for its use of the funds through a normal audit procedure. Accordingly, provision is made for the Road Fund board to amend an allocation formula during the course of the financial year in response to findings of technical or financial audits. This approach provides roads authorities with the incentive to strengthen financial discipline and gives the Fund a role in ensuring that optimal returns are achieved on monies expended.

Funds appropriated by Parliament

29. (1) The Road Fund board must make a recommendation to the Ministers Committee on the allocation of funds for all roads authorities from Parliamentary appropriations, having regard to -

- (a) the progressive implementation of full cost recovery through user charges; and
- (b) financial shortfalls which may occur pending the implementation of full cost recovery.

(2) The Fund Director must, subject to overview by the Road Fund board, disburse funds to other roads authorities in line with the appropriation made by Parliament for this purpose.

Note:

These provisions would be applicable in the case were parliamentary appropriations for all roads authorities are directed to the Fund. Where other roads authorities receive appropriations directly, e.g. via other ministerial budget votes, the need for the provisions would fall away. However, the possibility could still be considered to provide the Fund Director with a financial control role in respect of such funds.

Utilization of disbursed funds

30. (1) Monies paid to the Fund and disbursed to roads authorities in accordance with -

- (a) section 27 and 28 may, subject to subsection (2) and (3), be used for -
 - (i) planning, design, construction, rehabilitation, upgrading and maintenance of roads;
 - (ii) project management;
 - (iii) operation of road management systems; and
 - (iv) road traffic law enforcement, including the control of vehicle overloading;

- (v) research; and
- (vi) services related thereto; and
- (b) section 29 may be used for -
 - (i) promoting road safety; and
 - (ii) combatting pollution and environmental degradation.

(2) Monies paid to the user charges account and interest earned on the investment of those monies may only be used to defray expenditure relating to the maintenance, rehabilitation or upgrading of existing roads or of roads in respect of which such charges have been imposed.

(3) Monies received as toll or otherwise in connection with toll roads and interest earned on the investment of those monies, may be used only for the road in respect of which the toll has been collected, to defray the cost of:

- (a) the maintenance and operation of toll roads and toll plazas and any facilities connected with toll roads and toll plazas; and
- (b) paying off any loan in respect of a toll road and the payment of interest on such a loan.

Audit

31. (1) The Fund Director may, from time to time, conduct an audit in respect of funds disbursed to verify that funds were expended in line with -

- (1) an approved road network management plan; and
- (2) parliamentary appropriations.

(2) The Fund Director must report any deviation from an approved road network management plan or Parliamentary appropriations in the disbursement of funds to the Road Fund board.

(3) The Road Fund board -

- (1) may, in the case of a deviation from an approved road network management plan, issue a directive calling for corrective action and suspend any further disbursement pending compliance therewith; and
- (2) must, in the case of deviation from Parliamentary appropriations, notify the Ministers Committee.

(4) The Road Fund board may, where funds allocated to a particular roads authority or project are not utilized for whatever reason, re-allocate such funds in terms of an approved road network management plan.

New funding sources

32. (1) The Fund Director must advise the Road Fund board on the need to develop and implement new charging instruments or to abolish or to amend existing charging instruments to ensure that financing needs are adequately met.

(2) For the purpose of subsection (1), the Road Fund board must -

- (a) review the utility and adequacy of fuel levies and licence fees;
- (b) consider new charging instruments in the form of user charges which -
 - (i) accurately price road use;
 - (ii) are determined in a transparent and equitable manner; and
 - (iii) are regularly reviewed for accuracy and equity; and
- (c) consider the optimal level of fuel levies in conjunction with income derived from other sources.

Co-ordination

33. The Fund Director must facilitate a regular exchange between the Road Fund and roads authorities with a view to ensuring a common approach to -

- (a) new road funding sources;
- (b) management and financial systems;
- (c) financial implications of the management of the road network;
- (d) financial viability of envisaged projects;
- (e) procedures of evaluation of tenders; and
- (f) budgetary principles for administrative expenditure.

Contents of financial plan

34. (1) The Fund Director must perform his or her functions and duties in terms of a financial plan approved by the Road Fund board, which must -

- (a) contain an estimate of revenue and expenditure for the following financial year as well as such further financial years as may be determined by the board;
- (b) indicate current sources of revenue and confirmed or projected revenue from such sources;
- (c) reflect the state of each account in the Fund;

- (d) identify options for the diversification of revenue sources, specify new sources of revenue and projected revenue from such sources, and measures needed to protect the liquidity of the Fund;
- (e) distinguish between operational expenditure and administrative costs;
- (f) compare projected revenue for the previous financial year with actual revenue;
- (g) specify the manner in which surplus funds are to be invested;
- (h) the financial management and accounting systems to be implemented; and
- (i) report on the status of regional initiatives to harmonize national road user charging systems.

(2) The Fund Director must prepare the financial plan in consultation with the Chief Executive Officer.

(3) The Fund Director must submit the draft financial plan to the Road Fund board at least three months prior to the commencement of its financial year.

(4) The Road Fund board must meet at least two months prior to the commencement of its financial year, to consider the draft financial plan and may direct the Fund Director to amend any aspect of the plan to comply with the provisions of this Act.

(5) The Fund Director must submit at least one month prior to the commencement of the financial year the amended financial plan to the chairperson for approval and transmission to the Minister.

(6) The Minister may direct that any aspect of the financial plan be amended to comply with the provisions of this Act.

(7) The Minister must table a copy of the final financial plan in Parliament before the beginning of the financial year.

(8) The financial plan, or a summary thereof, must be published in the *Gazette* and one newspaper circulating countrywide.

Note:

It has been noted that budgetary practices in Member States differ and that the MLP should accordingly not prescribe the period for which a financial plan must apply. Hence it is left to the board to determine the periods to be dealt with in a plan in term of its individual short-, medium- and long-term planning.

Notes:

1. The model legislative provisions accommodate two optional institutional models, namely -
 - (a) **the “two board” model** which entails the establishment of two boards to manage the affairs of the Road Fund and the Roads Agency respectively. The provisions to give effect to this model are found in **Parts A, B, C, and D**; and
 - (b) **the “single board” model** which entails the establishment of a single integrated board which manages separate road funding and management focusses. This model entails consolidating the provisions relating to the Road Fund board and the Roads Agency board contained in **Parts B and C** and combining these with **Parts A**, the remainder of Parts B and C that deal with road financing and management respectively and **Part D**.
2. The model legislative provisions are designed to enhance structural flexibility. Member States wishing to establish the Road Fund board and the Roads Agency board through **separate legislation** will be able to do so by reconstructing the model legislative provisions as follows:
 - (a) Road Fund legislation will entail a consolidation of **Parts A, B, and D** of the model legislative provisions; and
 - (b) Roads Agency legislation will entail a consolidation of **Parts A, C and D** of the model legislative provisions.
3. The legal framework for the establishment of a **“single board”** can be created by consolidating the provisions in **Parts B and C** relating to the Road Fund board and Roads Agency board in a single chapter. The provisions of such chapter would include:
 - (a) establishment of a single roads board;
 - (b) definition of the role of the roads board comprising an amalgamation of the roles of the Road Fund and Agency boards respectively;
 - (c) definition of the composition of the roads board which entails an amalgamation of the members referred to in the provisions relating to the composition of the Road Fund board and the Roads Agency board (sections 11 and 42 respectively). For the purpose of the single board, there would not be a need to duplicate representation of service providers, users and of the Minister of Transport.
 - (d) all the remaining provisions in **Parts B and D** dealing with the conditions of service and procedures of the boards. These are -
 - (i) appointment of the board;
 - (ii) disqualifications;
 - (iii) period of office; meetings of board;
 - (iv) conditions of service;

- (v) general functions and powers of board;
 - (vi) annual report;
 - (vii) secretariat; and
 - (viii) expenditure.
4. As in the “**two board**” model, the primary thrust of this model is to ensure that there is no undue bias on the part of the Road Fund in favour of the Agency as opposed to other roads authorities / agencies. All the institutional safeguards provided for in the “**two board**” model and which are contained in the existing provisions would, therefore, also be relevant for the “**single board**” model. These institutional safeguards are, for example -
- (a) clear definition of road financing and management principles;
 - (b) transparent and accountable planning and reporting procedures;
 - (c) a duty on the board to record all its decisions; and
 - (d) strict “conflict-of-interest” provisions which may lead to a board member’s disqualification.

5. Over and above these institutional safeguards provision could be made for the establishment of a **road finance advisory committee** to strengthen the integrity of the board’s financing decisions. Such a committee would consist of -
- (a) members of the board with knowledge and expertise in financing and commercial banking; and
 - (b) co-opted members equal in number to the members drawn from the board representative of roads authorities at second and third-tier government levels and knowledgeable about road management and financing.
- The role of the committee would be to submit recommendations to the board regarding the planning for and allocation of funds to all roads authorities.
6. Implementation of the “**single board**” model would also require some editorial changes to the long title and objectives of the legislation.

CHAPTER IV: ROADS AGENCY

Establishment of Roads Agency

5. A Roads Agency is hereby established as a juristic person to -

- (a) plan the whole road network under its control and forecast demand;
- (b) facilitate co-ordinated planning of operations in respect of roads controlled by other roads authorities;
- (c) construct, upgrade, rehabilitate and maintain roads under its control with due cognisance of the objective of progressively phasing out the use of force account;
- (d) undertake procurement in terms of Chapter III of the Investment in Transport Act, 19.. for the construction, operation, maintenance, rehabilitation and upgrading of roads under its control;
- (e) contract with successful bidders and perform project management and quality control in terms of Chapter II of the Investment in Transport Act, 19..;
- (f) set technical and other standards;
- (g) operate and manage toll roads declared by the Road Fund board in terms of section 25(1)(b) and manage private toll road operators or other persons collecting user charges;
- (h) build and operate weigh-bridges and undertake overloading control actions;
- (i) undertake technical facilitation in the manner specified in section 57;
- (j) keep record of the road and other immovable and movable assets under its control;
- (k) let or hire plant, machinery, equipment or goods not immediately required for Agency operations;
- (l) submit a recommended classification of roads to the Minister, upon advice of the technical committee; and
- (m) research -
 - (i) operational requirements for charging systems;
 - (ii) optimal axle mass loads;
 - (iii) harmonized technical standards in respect of -
 - (aa) infrastructure planning, land use planning and design;
 - (bb) materials testing;
 - (cc) road and bridge construction;
 - (dd) general conditions of contract; and
 - (ee) project specifications; and

- (iv) any other matter related to the implementation of this Act directed by the Roads Agency board.

Note:

The question arises whether an independent Roads Agency is necessary given that technical road operations can be continued by the Ministry/Department. It is acknowledged that technical operational functions can be performed both in a Ministry/Department (as is the current situation in most Member States), or by an outside Agency. In practice the latter option is advantageous in so far as commercial management options can be more effectively applied to ensure better road management and more accurate road pricing. Where an Agency is created those functions normally performed by the Ministry/ Department are transferred to the Agency along with some or all of the government staff employed for that purpose.

Transfer of assets, rights and liabilities

36. (1) Subject to subsection (2), the assets (including immovable property), rights and liabilities of the State pertaining to roads are transferred to the Agency on the date of entry into force of this Act.

(2) The Minister may, by notice in the *Gazette*, published on or before the date referred to in subsection (1), specify the assets, rights and liabilities of the State which are not transferred to the Agency.

(3) The Agency assumes custodianship of the assets and rights formerly vested in the State and deals therewith in the manner specified in this Act or any other law.

Additional functions of Roads Agency

37. In addition to the Agency's main functions under section 35, the Agency may -

- (a) at the request of a second or third tier government, perform any work in connection with any road under the control of such government, or to have it done under its supervision, for the account of that government and charge a fee for such service;
- (b) provide, establish, erect and maintain facilities on roads for the convenience and safety of road users;
- (c) prescribe technical standards for the construction, upgrading, rehabilitation and maintenance of any road;
- (d) charge a levy, fee or rent for any authorisation, approval or permission that may be granted or given by the Agency to any person from time to time in terms of section 71 for the provision, construction, erection, establishment, carrying on or operation on, over or underneath any road, or anything provided for in the section concerned;
- (e) fence any road;
- (f) plant trees, shrubs, other plants or grass, and protect or promote any vegetation alongside a road, and to take any other steps for the convenience of users of a road or the appearance of a road or in order to prevent soil erosion or to prevent it arising as a result of the construction of a road;

- (g) establish and operate an information and management system concerning roads;
- (h) use any portion of a road that is not immediately required for traffic purposes, for any purposes which the Agency considers fit, subject to this Act;
- (i) exploit, for gain or reward, any immovable property owned by or under the control of the Agency (except roads), that is not used or immediately required for use in connection with the Agency's functions in terms of this Act;
- (j) take out insurance against any risk, loss or damage connected with the exercise of its powers or the performance of its functions or duties in terms of this Act;
- (k) liaise and exchange information, knowledge and expertise with the official bodies or authorities entrusted with control over roads of a national or international character in other countries, and to participate in the conferences, seminars and workshops of those bodies or authorities and in the activities of any multinational or international association of those bodies or authorities;
- (l) grant a bursary, loan or subsidy to any person for study or research in any subject or field in connection with roads, or grant a subsidy to any institution or body engaged in research of that nature, if the study or research will help it in performing its functions in terms of this Act;
- (m) exercise any power and perform any function conferred in terms of this Act or by any other law; and
- (n) do anything else which is reasonably ancillary to any of its functions in terms of this Act.

Force account

38. (1) The Chief Executive Officer must, in support of the progressive phasing out of the use of force account, prepare a proposal for submission to the Roads Agency board to identify the most appropriate phasing out options which may include -

- (a) the reorganization of the force account division to promote self-employment through the establishment of small, medium or micro enterprises;
- (b) the commercialisation of the force account division or components thereof through the adoption of a charter;
- (c) the corporatisation of the force account division or components thereof through incorporation of such division or component as a state-owned company;
- (d) the partial or full privatization of a state-owned company referred to in paragraph (c), through the trading of shares in such company including the allocation of appropriate equity in such company to former force-account employees;
- (e) strategies to achieve cost-effective and commercially-viable force account operations;

- (f) performance and efficiency targets to be achieved; and
- (g) time scales for implementation of strategies and targets.

(2) The Chief Executive Officer must regularly report to the Roads Agency board on the progress achieved with meeting the targets referred to in subsection (1)(f).

Note:

The provisions on the force account are intended to encourage its progressive phasing out without imposing undue hardship on individual employees. Hence, the provisions express a preference for re-organization / restructuring options which encourage the use of former force account employees as small contractors or alternatively promote the establishment of a commercial entity which can assume former force account operations and operate at a profit.

Management of Roads Agency

39.(1) The affairs of the Roads Agency are managed by a Roads Agency board appointed in terms of this Act.

(2) The Roads Agency board is assisted by such staff as may be appointed in terms of section 51.

Role of Roads Agency board

40.(1) The role of the Roads Agency board is to -

- (a) assume stewardship over the reform of road management to realize the objectives of the Act;
- (b) provide technical and financial inputs to the Road Fund board to ensure balanced road financing decisions; and
- (c) guide the technical operations of the Agency and exercise the supervisory functions entrusted to it by this Act.

(2) The Roads Agency board undertakes its role, with support from the Chief Executive Officer, by -

- (a) setting priorities for road management based on appropriate criteria; and
- (b) ensuring that the operations of the Agency are technically-appropriate and financially-sound.

Composition of Roads Agency board

41. (1) The Roads Agency board comprises representatives from the private and public sectors appointed by the Minister.

(2) The Minister must, subject to section 43 appoint members of the Roads Agency board representative of the private and public sectors in a ratio which ensures that the majority of the members are representative of private sector interests in accordance with the provisions of subsections (3) and (4).

(3) The Minister must appoint members of the Roads Agency board representative of private sector interests which include -

- (a) at least two but not more than three persons who are registered professional engineers and who are able to advise the board, amongst others, on technical standards and project management;
- (b) one person with proven expertise in the construction and maintenance of roads; and
- (c) two persons with proven expertise in their fields of competence representative of -
 - (i) transport service providers, who are able to advise the board on, amongst others, the needs of the road transport industry, the flow of passengers and freight, facility needs and law enforcement; and
 - (ii) transport users, who are able to advise the board on, amongst others, the general needs of transport users, goods and commodity flows, import and export needs and logistical requirements.

(4) The Minister must appoint members of the board representative of public sector interests which include -

- (1) the Permanent Secretary/Principal Secretary/Secretary/Director-General responsible for public works or his or her nominee to ensure convergence between the implementation of roads and public works policy; and
- (2) the Permanent Secretary/Principal Secretary/Secretary/Director-General or his or her nominee to represent the Minister.

(5) The Chief Executive Officer must participate in the deliberations of the board by virtue of his or her position but has no vote.

Appointment of Roads Agency board

42. (1) The Minister must appoint the members of the Roads Agency board by -

- (a) calling for nominations for members of the board by publishing a notice in the Gazette and one newspaper circulating countrywide;
- (b) for the purpose of section 41(3), specifically requesting nominations from appropriate stakeholders which may include the -
 - (i) bus passenger transport industry;
 - (ii) taxi industry;

- (iii) road freight transport industry;
 - (iv) national chamber of commerce;
 - (v) national farmers association;
 - (vi) exporter's association;
 - (vii) logistics industry; and
 - (viii) tourism industry;
- (c) publishing the short-list of nominations by notice in the *Gazette* and one newspaper circulating countrywide;
 - (d) in the notice referred to in paragraph (c), setting a date by which persons wishing to object to or comment on the proposed appointees may do so; and
 - (e) taking into account comments or objections received in respect of proposed appointees.

Note:

As a supplementary measure, provision could also be made for candidates to be interviewed through a process of public hearings. This procedure will have the advantage of increasing the transparency of the appointment process. The latter is of particular importance in view of the fact that a member of the board will assume collective responsibility with his/her colleagues for substantial public assets.

(2) The Minister must by notice in the *Gazette* and one newspaper circulating countrywide, publish a list of members of the Roads Agency board within one month after their appointment.

(3) The Minister must designate a public official as the chairperson and another as deputy chairperson until the Roads Agency board has met in terms of section 45 and is able to nominate its own presiding officers from among its members.

(4) The Roads Agency board must endeavour to nominate persons knowledgeable in corporate management and financing as chairperson and deputy chairperson.

(5) The Minister must appoint the Roads Agency board's nominees as chairperson and deputy chairperson respectively.

(6) The Minister may, with due cognisance of the need to retain majority private sector membership of the Roads Agency board and in order to facilitate improved co-ordination between public sector representatives on the board and overall effectiveness of the board or enhanced representativeness of a stakeholder group, increase membership of the board.

(7) If the Minister acts in terms of subsection (6), he or she must, upon expiry of the period of the office of the members referred to in that subsection, replace those members by requesting nominations from those stakeholder groups listed in subsection (1)(b) whose nominees were not appointed to the previous Roads Agency board.

Disqualifications

43. No person is eligible to be a member of the Roads Agency board if he or she -

- (a) is or becomes a member of Parliament, a provincial legislature or a council of a local authority;
- (b) is or becomes disqualified to serve as a director in terms of the provisions of the Companies Act, 19..;
- (c) has or acquires any interest, whether monetary or otherwise, in any port-related enterprise, which may conflict or interfere with the proper performance of his or her duties as a director; or
- (d) has at any time been or is convicted, whether in the Republic/Kingdom or elsewhere of theft, fraud, forgery or perjury.

Period of office of members of Roads Agency board

44. (1) With the exception of the members of the Roads Agency board referred to in section 42(3), a member of the Roads Agency board holds office for a period determined by the Minister, which period may not exceed 3 years.

(2) For the purpose of subsection (1), the Minister must give due regard to the need to ensure continuity in the membership of the Roads Agency board and to this end must differentiate between the periods of office of members of the board: Provided that such periods are disclosed to a member at the time of appointment to the board.

(3) A member of the Roads Agency board, including the chairperson, deputy chairperson, and the Chief Executive Officer must vacate his or her office -

- (a) upon expiry of his or her term of appointment;
- (b) if he or she is incapacitated by physical or mental illness;
- (c) if his or her estate is sequestrated;
- (d) if he or she becomes disqualified to serve as a member in terms of the provisions of the Companies Act, 19..; or
- (e) if he or she is nominated as a candidate for election as a member of Parliament, a provincial legislature or a council of a local authority.

(4) The Minister may, subject to subsection (5) -

- (a) dismiss a member of the Roads Agency board if such member -
 - (i) fails to perform his or her duties diligently or efficiently;

- (ii) is unable to perform his or her duties because of mental illness or disability;
 - (iii) has been absent without the permission of the chairperson from three consecutive meetings of the Roads Agency board, without good reason; or
- (b) substitute such member in the case of a member in the employ of the State.
- (5) The Minister may not dismiss a member of the board before -
- (a) he or she has served a notice on such member setting out the reasons for his or her dissatisfaction with the member's performance;
 - (b) the member concerned has been allowed a fair hearing before an independent and impartial panel appointed by the Minister in terms of subsection (6);
 - (c) due consideration of the recommendations made by such a panel after the hearing referred to in paragraph (b).
- (6) The Minister must, before appointing the panel referred to in subsection (5) -
- (a) publish a notice of his or her intention to appointment such a panel in the *Gazette* which -
 - (i) lists the names of the persons to be appointed to the panel; and
 - (ii) allows a reasonable time for comments to be submitted by interested parties; and
 - (b) give due consideration and reply in writing to any comment submitted in terms of paragraph (a)(ii).
- (7) If the Minister dismisses a member of the board, despite a recommendation by the panel that such member should not be dismissed, the decision is subject to review of a court, which may-
- (a) confirm the decision of the Minister; or
 - (b) set aside the decision of the Minister and make any decision it sees fit, including a decision that the dismissed member be reinstated or that the dismissed member be paid appropriate compensation.
- (8) A member of the Roads Agency board may resign on one month's written notice to the Minister.
- (9) The Minister must fill vacancies on the Roads Agency board within 3 months.
- (10) Subject to section 46, a member is appointed on such terms and conditions and at such rate of remuneration as the Minister may determine in the letter of appointment.

Meetings of Roads Agency board

45. (1) The first meeting of the Roads Agency board must be held at a time and place determined by the Minister and thereafter meetings must be held at times and places determined by the Roads Agency board.

- (2) The Roads Agency board must elect a chairperson and deputy-chairperson at its first meeting.
- (3) A quorum for any meeting of the Roads Agency board is a majority of the members appointed.
- (4) A decision of the majority of the members of the Roads Agency board present at a meeting is a valid decision provided there is a quorum.
- (5) In the case of an equality of votes the chairperson has a casting vote and must exercise such vote to break a deadlock.

Conditions of service of members of Roads Agency board

46. (1) A member of the Roads Agency board, other than the Chief Executive Officer, or a person who is in the full-time employment of the State or a local authority, is appointed on the conditions of service including conditions relating to the payment of remuneration and allowances for travel and subsistence, as may be prescribed by the Minister upon advice of the Chief Executive Officer.

(2) Conditions of service determined under subsection (1) may differ according to whether the person concerned serves on the Roads Agency board because of his or her office or on a full-time or part-time basis or in a professional capacity.

(3) The Minister determines the salary, honorarium for attending meetings and rates of compensation for travel and subsistence of a director, but a director who is in the paid employment of the State may only receive a honorarium and compensation for travel and subsistence expenses related to his or her duties as a director.

General functions and powers of Roads Agency board

47. (1) The Roads Agency board performs its functions and exercises its powers with reference to the applicable provisions of the Investment in Transport Act, 19.., and in particular the investment approach and investment methodology set out in Chapters II and III respectively.

(2) The functions of the Roads Agency board are to -

- (a) approve the road network management plan prepared by the Chief Executive Officer in terms of section 56 and guide its implementation;
- (b) ensure the efficient procurement undertaken by the Chief Executive Officer on behalf of the Agency in accordance with the road network management plan and the applicable provisions of the Investment in Transport Act, 19.. referred to in subsection (1);
- (c) monitor compliance between the activities of the Agency and the contents of the approved investment and release strategy;
- (d) oversee the execution of the Agency's research programme;
- (e) monitor the phasing out of the use of force account in terms of section 38;

- (f) appoint the Chief Executive Officer of the Agency in terms of section 48 and oversee the appointment of staff of the Agency in terms of section 50;
- (g) in general, give directives to the Chief Executive Officer in order to give effect to the objectives of this Act; and
- (h) advise the Minister, upon request, with regard to any matter related to the implementation of this Act.

(3) For the purpose of subsection (2), the board has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions, including to -

- (a) acquire, hold, dispose of and deal with property, including property formerly owned by the State transferred to the Agency;
- (b) appoint staff for its secretariat in terms of section 50;
- (c) institute and conduct civil proceedings with regard to all matters relating to its functions;
- (d) sue or be sued in its own name;
- (e) enter into contracts;
- (f) charge or fix terms for services and information supplied by it;
- (g) appoint agents and attorneys; and
- (h) engage consultants and auditors.

(4) The board may, in writing, delegate any of the powers referred to in subsection (3) to the Chief Executive Officer.

Appointment of Chief Executive Officer

48. (1) The Roads Agency board must, subject to the provisions of subsection (3), appoint a Chief Executive Officer within three months after the date of entry into force of this Act.

(2) For the purpose of subsection (1), the Roads Agency board must invite applications for the post by publishing an advertisement in one newspaper circulating countrywide.

(3) Any person appointed to the post of Chief Executive Officer must -

- (a) be knowledgeable about road management and operations;
- (b) be a professional engineer of at least fifteen years standing or have worked in as an engineer in a professional capacity for at least fifteen years;
- (c) have at least ten years appropriate experience of which at least five years must have been gained in an executive management capacity;

- (d) be a ... citizen, unless expressly exempted by the Roads Agency board from this requirement; and
- (e) not have been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or perjury.

(4) The appointment of the Chief Executive Officer is subject to the conclusion of a performance contract between such person and the Roads Agency board.

(5) An appointment in terms of this section is for a period of five years, whereafter the post of Chief Executive Officer must be re-advertised in the manner specified in subsection (2).

(6) A serving Chief Executive Officer is eligible for re-appointment after the expiration of the period of appointment referred to in subsection (5).

(7) A Chief Executive Officer holds office on such terms and conditions, including remuneration and allowances as the Roads Agency board determines in writing.

Note:

The provisions of subsection (3)(b) accommodate variations between those Member States which have legislation governing the registration of professional engineers and those Member States which do not.

(8) The provisions of this section do not exclude the provisions of ... (insert reference to applicable labour legislation) relating to procedures and remedies in respect of the dismissal of an employee.

Functions, duties and powers of Chief Executive Officer

49. (1) The functions and duties of the Chief Executive Officer are to -

- (a) supervise the technical operations of the Agency;
- (b) conclude procurement contracts in terms of the approved procurement strategy;
- (c) supervise the rationalization of the personnel of the Agency to progressively reduce the use of force-account in terms of an approved personnel plan;
- (d) co-ordinate between the Agency and road traffic and road transport authorities regarding the enforcement of road traffic and transport laws;
- (e) liaise with the Fund Director in respect of any matter affecting the Road Fund;
- (f) supervise communication and marketing campaigns aimed at sensitizing road users and the general public to the role of roads in economic development and the activities of the Agency;
- (g) supervise law enforcement in respect of roads, road transport or road traffic by Agency personnel in terms of an agreement with a law enforcement Agency approved by the Minister;

- (h) collaborate with counterpart authorities or agencies in the region to promote regional harmonization and co-ordinate planning; and
- (i) report regularly to advise the Roads Agency board, upon request, with regard to any matter related to the management and administration of the Agency.

(2) For the purpose of subsection (1), the Chief Executive Officer has the power to -

- (a) open a bank account or accounts with a registered financial institutional in the name of the Agency and deposit or withdraw monies from such account or accounts;
- (b) invest money not immediately required for the purpose of the Agency in a sound commercial manner or as directed by the Roads Agency board;
- (c) appoint staff, in the manner specified in section 50;
- (d) enter into contracts;
- (e) prosecute claims in favour of the Agency, whether under contract or otherwise;
- (f) engage consultants and auditors;
- (g) appoint agents and attorneys; and
- (h) perform any act incidental to the effective performance of his or her duties.

(3) The Chief Executive Officer may in writing delegate any power referred to in subsection (2) to an employee of the Agency, but is not thereby relieved of a duty or responsibility assigned to him or her in terms of this Act.

Appointment of staff

50. (1) The Chief Executive Officer may in consultation with the Roads Agency board appoint such person or persons as staff as he or she deems fit for the proper discharge of the functions of the Agency as the case may be.

(2) Any appointment in terms of this section -

- (a) must be in accordance with the provisions of the road network management plan which has been approved by the Roads Agency board; and
- (b) is subject to such conditions of service as the Roads Agency board may approve, upon recommendation of the Chief Executive Officer.

Transfer of personnel

51. On the date of entry into force of this Act, such personnel of the Ministry/Department, including personnel employed as force account, as are designated by the Permanent Secretary/Principal Secretary/Secretary/Director-General for that purpose, may be transferred to the road Agency, and, where

this occurs, such transfer must be subject to the same conditions of service and without loss of any benefits.

Finance

52. (1) The operations of the Roads Agency is financed out of -

- (a) funds disbursed to it, upon application, by the Road Fund in terms of section 29;
- (b) loans secured in terms of section 59; and
- (c) moneys advanced from the Central Revenue Fund for non commercial activities in terms of section 58.

(2) The financial year of the Agency is the same as that determined by the Road Fund board in terms of section 21.

Annual report

53. (1) The Roads Agency board must, not later than three months after the close of their financial year, submit an annual report to the Minister, based on reports of the Chief Executive Officer, providing -

- (a) an overview of the operations of the Agency;
- (b) an assessment of the degree to which performance targets have been achieved in particular with regard to -
 - (i) progress achieved with the contracting out of Agency functions to private contractors; and
 - (ii) the rationalization of Agency personnel;
- (c) an assessment of the adequacy of road funding, the degree to which sources for road financing have been exploited and the cost of road operations to the exchequer has been reduced;
- (d) a report on the condition of the road network and the degree of change in condition since the last report, the projected optimal level of the network and the extent of financing required to meet that level;
- (e) a review of the technical adequacy and proven cost efficiency of road management operations;
- (f) a report on progress achieved with co-ordination between road authorities and regional co-operations;
- (g) the audited financial statements of the Agency; and

- (h) generally, a report on the degree to which the objectives of this Act have been realized and the levels of compliance with the provisions of this Act.

(2) The Minister must table the report in Parliament -

- (a) within 14 days if Parliament is in ordinary session; or
- (b) within 14 days after the commencement of a session of Parliament if Parliament is not in ordinary session.

Accounting and auditing arrangements

54. (1) The Agency must keep accounting records as are necessary in accordance with internationally accepted accounting practice to reflect fairly the state of affairs and business of the Agency and to explain the transactions and financial condition of the Agency.

(2) The Agency must be audited by independent auditors appointed by the Roads Agency board.

CHAPTER V: MANAGEMENT APPROACH

Road management principles

55. The following principles apply to the management of all roads -

- (a) management priorities must be set in line with the approved investment and release strategy;
- (b) technical operations must be contracted out to private contractors, unless the economic cost thereof exceeds the cost of using force account;
- (c) economic criteria must be applied to all planning decisions;
- (d) planning must adopt a harmonized approach between roads authorities and promote the integrated development of the road network;
- (e) complementarity between road management systems must be encouraged;
- (f) regional co-operation must be encouraged, in particular, the development of the Regional Trunk Road Network; and
- (g) the development of harmonized technical standards must be facilitated.

Road network management plan

56. (1) The Chief Executive Officer must perform his or her functions and duties in terms of a road network management plan approved by the Roads Agency board, which must -

- (a) specify a roads development programme for the following financial year and any ensuing financial years as determined by the board in accordance with the approved investment and release strategy, including -
 - (i) construction programmes for new roads; and
 - (ii) maintenance, rehabilitation and upgrading programmes in respect of existing roads;
- (b) identify whether a project forming part of a programme referred to in paragraph (a) will be undertaken by -
 - (i) private contractors; or
 - (ii) the force account;
- (c) in the case of a project referred to in paragraph (b)(i), specify the type of contract which it is envisaged to conclude with a private contractor;
- (d) estimate projected funding requirements over the period of the plan;
- (e) specify a procurement schedule; and
- (f) set out a personnel rationalisation strategy.

(2) The Chief Executive Officer must prepare the road network management plan in consultation with the Fund Director.

(3) The Chief Executive Officer must submit the draft road network management plan to the Roads Agency board at least three months prior to the commencement of the financial year of the Agency.

(4) The Roads Agency board must meet at least two months prior to the commencement of the financial year of the board, to consider the draft road network management plan and may direct the Chief Executive Officer to amend any aspect of the plan to comply with the provisions of this Act.

(5) The Chief Executive Officer must submit at least one month prior to the commencement of the financial year the amended road network management plan to the chairperson for approval and transmission to the Minister.

(6) The Minister may direct that any aspect of the road network management plan be amended to comply with the provisions of this Act.

(7) The Minister must table a copy of the final road network management plan in Parliament before the beginning of the financial year.

(8) The road network management plan, or a summary thereof, must be published in the *Gazette* and one newspaper circulating countrywide.

Note:

The note in relation to section 34 regarding the period or periods in respect of which the financial plan is to apply, is also relevant here.

Technical facilitation

57. The Chief Executive Officer must appoint a technical committee comprising an equal number of officials of the Agency and persons nominated by other roads authorities who are knowledgeable regarding planning, road management systems and technical standards to -

- (a) co-ordinate the preparation of the Agency's road network management plan and the road network management plan of other roads authorities;
- (b) harmonize -
 - (i) road management systems; and
 - (ii) technical standards;
- (c) submit recommendations to the Minister regarding the -
 - (i) declaration of a road in terms of section 60; and
 - (ii) classification of roads as primary, secondary or tertiary roads; and
- (d) perform any other operational function directed by the Roads Agency board or the Chief Executive Officer.

Non commercial activities

58. (1) If the Minister wishes the Agency to perform any activity or to cease to perform an activity or not to perform any activity in relation to a road, in circumstances where the Chief Executive Officer considers that it is not financially viable to do so, the Minister may, with the approval of the Minister of Finance, by written notice to the Chief Executive Officer, direct the Agency to do so in accordance with the requirements set out in the notice.

(2) The Agency is required to comply with a direction in terms of subsection (1) and the cost thereof is defrayed from the Fund.

(3) Money to cover the net cost of -

- (a) performing the activity, including the cost of capital; and
- (b) complying with a direction to cease to perform or not to perform any activity,

must be advanced to the Fund from the Central Revenue Fund or appropriated by Parliament prior to any expenditure being undertaken.

(4) The amounts and times of payment of these amounts are as agreed between the Minister and the Roads Agency board.

(5) The Fund may be reimbursed, from money advanced from the Central Revenue Fund or appropriated from Parliament for the purpose, amounts not exceeding the estimated net amount of revenue foregone through ceasing to perform or not to perform any such activity, as determined by the Minister of Finance having regard to such factors as he or she considers relevant.

Loans and Government guarantees for loans

59. (1) The Minister may grant loans to the Agency from monies made available by Parliament for that purpose.

(2) The Agency will pay interest on such a loan at a rate determined by the Minister acting with the agreement of the Minister of Finance, and must repay the loan in the instalments and within the period determined by the Minister.

(3) Subject to approval by the Roads Agency board, the Chief Executive Officer may, with the written permission of the Minister acting with the agreement of the Minister of Finance, raise loans from any other source to finance any expenditure that may be incurred by the Agency during any financial year for the purposes of the planning, design, construction, maintenance or rehabilitation of any road.

(4) The permission may be granted subject to any conditions determined by the Minister acting with the agreement of the Minister of Finance.

(5) The Minister acting with the agreement of the Minister of Finance may guarantee any loan raised by the Agency in terms of subsection (3) on behalf of the State.

Declaration and classification of roads other than toll roads

60. (1) The Minister may, by notice in the *Gazette*, acting on the advice of the technical committee referred to in section 59 and in consultation with the Ministers Committee -

- (a) declare a road, a category of road or a route the boundaries of which have been fixed by survey and which is not subject to a toll -
 - (i) to be subject to the provisions of this Act and the control of the Agency; and
 - (ii) no longer to be subject to the provisions of this Act and specify the roads authority which will assume control over such road or route; or
- (b) classify a road, a category of road or a route the boundaries of which have been fixed by survey as a primary secondary or tertiary road.

(2) A declaration in terms of subsection (1) has the effect of transferring the ownership of a road or route to the roads authority which assumes control of such road or route.

Note:

It should be noted that in some Member States, the Minister may only have responsibility for the primary road network in terms of constitutional or other legislative requirements. In such cases, these provisions will need to be adapted to reflect the more limited scope of the Minister's authority.

Rendering of services outside the Republic/Kingdom

61. (1) The Minister may, with the concurrence of the Roads Agency board, conclude an agreement with his or her counterpart in any other State or territory as contemplated in section 84 of the Investment in Transport Act, 19..., whereby the Agency may perform any function, which the Agency is authorised to perform in the Republic/Kingdom in terms of this Act, in such State or territory.

(2) The agreement referred to in subsection (1) must provide for equitable remuneration to be paid by the government of a State or territory to the Agency for the performance of such function.

(3) If remuneration agreed to by the Minister does not compensate the Agency at a reasonable rate of return, the Minister must direct the Permanent Secretary/Principal Secretary/Secretary/Director-General to make up the shortfall from the budget of the Ministry/Department.

CHAPTER VI: ROAD OPERATIONS AND USE OF ROADS

Note:

The provisions of this chapter relate chiefly to technical aspects of road management and operations. Some Member States have expressed a preference to include these provisions in the MLP, others do not have the requirement as the issues addressed here are already taken care of in existing national legislation. Each Member State should include / exclude these provisions on the basis of national circumstances.

Expropriation of land for purposes of road

62. (1) Subject to subsection (2) and to the obligation to pay compensation, the Agency may, if it reasonably requires -

- (a) any land for a road or for works or other purposes connected with a road, including any access road, the acquisition, excavation, mining or treatment of gravel, stone, sand, clay, water or any other material or substance, the accommodation of road building staff and the storage or maintenance of any plant, vehicles, machines, equipment, tools, stores or material, expropriate such land;
- (b) take gravel, stone, sand, clay, water or any other material or substance on or in land for the construction of a road or for works or any of the purposes mentioned in paragraph (a); and
- (c) the right to use land temporarily for any of the purposes referred to in paragraph (a), take such right.

(2) The Agency may not exercise a power in terms of subsection (1) unless the Agency is unable to acquire the land or anything mentioned in paragraph (b) of that subsection, or the right to use the land temporarily, by agreement with the owner of the land or the holder of any relevant rights in respect of the land, as the case may be.

(3) Subject to the obligation to pay compensation, and if satisfied on reasonable grounds that any land is or will be divided by a road contemplated in subsection (1)(a) in such a manner that the land or any part of it is or will be useless to its owner, the Agency may expropriate that land or the relevant part thereof.

(4) Where the Agency expropriates any land in terms of subsection (1) or (3), the Agency becomes the owner thereof on the date of expropriation of the land concerned.

State land may be made available to Agency for purposes of road

63. (1) On request made by the Agency in consultation with the Minister, the Minister of Public Works may make any State land available for transfer to the Agency for the purposes of a road at a fair price.

(2) For the purpose of subsection (1), a fair price is determined with reference to the criteria laid down in legislation relating to expropriation.

Entry upon land

64. (1) Subject to subsections (2), (3) and (4), any employee of the Agency or other person authorised in writing thereto by the Chief Executive Officer (hereafter called a delegate), may, with the permission of the owner of any land, enter upon that land with the necessary workers, machines, vehicles, equipment, tools, instruments or materials to perform or carry out on, below the surface of or in connection with that land, any investigation, survey, observation or other act necessary for or in connection with the exercise or performance of a power, function or duty imposed on the Agency in terms of this Act.

(2) Where the owner of any land has refused permission to enter upon such land, the High Court within whose area of jurisdiction that land is situated, may on application by the Agency and subject to subsection (3), issue an order authorising entry upon such land if satisfied that entry is reasonably necessary and justifiable in the circumstances.

(3) The provisions of subsection (2) may not be applied to gain access to any dwelling or any other building on the land in use for residential purposes.

(4) A court order issued in terms of subsection (2) must specify the purpose for which entry upon the land is authorised, the acts that may be performed or carried out on the land in connection with that purpose and the persons by whom, the means whereby or the manner in which they are to be performed, and may stipulate any conditions with regard thereto.

(5) The Agency must repair or pay for any damage arising from any act performed by an employee or delegate in term of this section.

Closing or diverting road

65. (1) The Agency may close a road to traffic or divert the roadway of a road whenever in its opinion it is necessary or desirable to do so.

(2) Any person who without the permission of the Agency uses a road so closed to traffic, is guilty of an offence and liable on conviction to a term of imprisonment not longer than three months, or a fine, or to both the term of imprisonment and the fine.

Damaging of road

66. (1) Any person who damages a road wilfully or negligently, is guilty of an offence and liable on conviction to a term of imprisonment not longer than one year, or a fine, or to both the term of imprisonment and the fine.

(2) The court convicting a person of an offence contemplated in subsection (1) may, in addition to imposing a sentence on such a person, order that person to pay to the Agency an amount which, in the court's opinion, is equal to the amount of the damage caused.

(3) An order referred to in subsection (2) has the force of a civil judgement and may be enforced in the same manner as a civil judgement.

(4) The owners or occupiers of land adjoining any road must -

- (a) take all measures on their land that are reasonably necessary to prevent the occurrence of any damage to the road concerned, including any measures as prescribed from time to time for that purpose; and
- (b) refrain from doing or permitting anything on or below the surface of that land which is likely to cause damage to that road.

(5) The owner or occupier of any land adjoining a road will be liable for any damage to the road which was or reasonably should have been foreseen and which could have been avoided had the owner or occupier taken measures in compliance with subsection (4)(a), or refrained in compliance with subsection (4)(b) from doing or permitting anything contemplated in the latter subsection.

(6) For the purposes of ensuring compliance with subsection (5), the Agency by notice in writing may demand that the owner or occupier of any land adjoining a road does the following to prevent the occurrence of any damage which, in the Agency's opinion, is likely to be caused to a road -

- (a) takes on that land the measures, specified in the notice, within the period mentioned therein, or allows the Agency to take those measures itself; or
- (b) forthwith stops doing or permitting anything particularly specified in the notice, at any place, on or below the surface of that land, specified in the notice.

(7) The demand made in the notice may, amongst others, order the removal, filling in, alteration, relocation or establishment of any dam, canal, trench, wall, sluice, pipe, excavation, structure or other works, or the cessation of such an act, on the land.

(8) If the owner or occupier of the land fails or refuses to comply with that notice, the Agency may apply to the High Court within whose area of jurisdiction that land is situated for an order directing the owner or occupier -

- (a) to take the measures specified in the notice, on that land, or to allow the Agency to do so itself; or
- (b) (as the case may be) to stop doing or permitting the thing so specified at the specified place on that land.

(9) The court may order that all or any of the measures demanded by the Agency or any other measures that the court considers fit, be taken by the owner or occupier, or, as the case may be, that the owner or occupier ceases doing or permitting all or any of the things complained of, if satisfied -

- (a) that due to the circumstances prevailing on the particular land, damage is likely to be caused to the road in question; and
- (b) that the damage to that road is likely to be avoided by taking those measures or by ceasing to do or to permit those things.

(10) The court may order either of the parties to bear the costs of complying with that order, depending on whatever may be fair and just in the circumstances, and may make any order as to the costs of the proceedings that it considers fit.

(11) In any deserving case the Agency, in its discretion and without prejudice to any of its rights, may with the Minister's approval pay the whole or any part of the costs incurred by the owner or occupier of land in complying with any notice issued under subsection (6).

Disposing of roads' storm-water

67. (1) The Agency may divert storm-water from or under a road onto any land but must pay compensation for any damage caused by the diversion of the storm-water except in the circumstances mentioned in subsection (2).

(2) Where a township is established on land adjoining a road, the person establishing the township must receive and dispose of the storm-water discharged or diverted from the road, and the Agency will not be liable for any damage caused in the township by the storm-water.

Agency may pay compensation for damage or loss due to its activities

68. The Agency, at its discretion and on any conditions it considers fit, may -

- (a) pay the costs or part of the costs incurred by an authority in connection with a road or may have become necessary as a result of the construction, maintenance or rehabilitation of a road; or
- (b) pay an amount to any person for any damage, loss or inconvenience which, in the opinion of the Agency, has been or will be suffered by the person as a result of the exercise or performance of any of the powers, functions or duties entrusted to the Agency or any other person by or in terms of this Act, and for which no compensation is payable in terms of this Act.

Law enforcement on roads

69. (1) The Agency may, subject to the provisions of applicable criminal procedure legislation, authorise any of its employees to take steps on a road or any other property of the Agency, in the manner and on the conditions as prescribed, in order to prevent any offences created by this Act, any other contraventions thereof and any offences in terms of the road traffic and the road safety laws being committed on the road or other property.

(2) Such an authorised employee will have the powers of arrest and detention conferred on a peace officer in terms of applicable criminal procedure, road traffic and road traffic safety legislation.

Access to and egress from roads

70. (1) No person may -

- (a) take a vehicle onto a road except at an entrance provided for that purpose;
- (b) take a vehicle off a road except at an exit provided for that purpose;
- (c) enter a road which is fenced, except at an entrance provided for that purpose; or
- (d) leave a road which is fenced, except at an exit provided for that purpose.

(2) Only the Chief Executive Officer or a person acting on his or her written authority may provide or authorise an entrance to or an exit from a road.

(3) For the purposes of this section, “entrance” and “exit”, with regard to a road, means any road (whether a public road or not), bridge, subway, gate, sty, passage or other means by which the road can be entered or left, respectively.

(4) A person is guilty of an offence -

- (a) upon contravening a provision of subsection (1), and liable on conviction to a term of imprisonment not longer than three months, or a fine; or
- (b) when providing or making an entrance to or exit from a road without the Agency’s written authorisation in terms of subsection (2), and liable on conviction to a term of imprisonment not longer than six months, or a fine, or to both the term of imprisonment and the fine.

Structures and other works on, over or below roads or certain other land

71. (1) Except as provided in subsection (2), no person may do any of the following things without the Agency’s written permission or contrary to that permission, namely -

- (a) on or over, or below the surface of, a road or land in a building restriction area, erect, construct or lay, or establish any structure or other thing (including anything which is attached to the land on which it stands even though it does not form part of that land);

- (b) make any structural alteration or addition to a structure or that other thing situated on or over, or below the surface of, a road or land in a building restriction area; or
- (c) give permission for erecting, constructing, laying or establishing any structure or that other thing on or over, or below the surface of, a road or land in a building restriction area, or for any structural alteration or addition to any structure or other thing so situated.

(2) The Agency, in its discretion, may give or refuse its permission in terms of subsection (1).

(3) When giving permission, the Agency may prescribe -

- (a) the specifications to which the structure, other thing, alteration or addition for which permission is asked, must comply;
- (b) the manner and circumstances in which, the place where and the conditions on which the structure, other thing, alteration or addition may be erected, constructed, laid, established or made; and
- (c) the obligations to be fulfilled by the owner of the land in question of the structure, other thing, alteration or addition is erected, constructed, laid, established or made.

(4) Where a person without the permission required by subsection (1) or contrary to any permission given thereunder, has erected, constructed, laid or established a structure or other thing or has made a structural alteration or addition to a structure or other thing or given permission therefor, the Agency by notice in writing may direct that person to remove the unauthorised structure, other thing, alteration or addition within a reasonable period which must be stated in the notice but which may not be shorter than 30 days calculated from the date of the notice.

(5) If the person to whom a notice has been issued in terms of subsection (4), fails to remove the structure, other thing, alteration or addition mentioned in the notice, within the period stated therein, it may be removed by the Agency itself which may recover the costs of the removal from that person.

(6) Any person who contravenes a provision of subsection (1) is guilty of an offence and liable on conviction to a term of imprisonment not longer than one year, or a fine, or to both the term of imprisonment and the fine.

Advertisements on or visible from roads

72. (1) Except as provided in subsection (2), no person may –

- (a) display an advertisement on a road, or permit it to be so displayed; or
- (b) display, outside an urban area, any advertisement visible from a road, or permit any advertisement which is so visible, to be so displayed.

(2) Subsection (1) does not apply to the displaying of any advertisement complying with the prescribed requirements as to the nature, contents or size of such an advertisement or the time, manner or place of its display.

(3) Any person who displays an advertisement contrary to the provisions of this section who has been directed by the Agency by notice in writing to remove that advertisement, must do so within the period stated in the notice which may not be shorter than 14 days.

(4) If the person to whom a notice in terms of subsection (3) is directed, fails to remove the advertisement specified in the notice within the period stated therein, it may be removed by the Agency itself which may recover the costs of the removal from that person.

(5) Any person who contravenes a provision of subsection (1), is guilty of an offence and liable on conviction to a term of imprisonment not longer than six months, or a fine.

Disused vehicles or machinery and other rubbish on or near roads

73. (1) No person may -

- (a) deposit or leave a disused vehicle or machine or a disused part of a vehicle or machine, or any rubbish or other refuse on a road; or
- (b) without the Agency's written permission or contrary to any condition imposed by the Agency and set out in the written permission, deposit or leave, any disused vehicle, machine or part, or any rubbish or other refuse on land outside an urban area and within 150 metres from the boundary of a road.

(2) The Agency may remove a disused vehicle or machine or a disused part of a vehicle or machine, or any rubbish or other refuse, found on a road, and may recover the costs of the removal from the person who deposited or left the disused vehicle, machine, part, rubbish or other refuse on that road.

(3) If, on any land mentioned in subsection (1)(b), there is found any disused vehicle or machine or disused part of a vehicle or machine, or any rubbish or other refuse, and the person who deposited or left it there or any person entitled to remove it, has been directed by the Agency by notice in writing to remove it -

- (a) such person must remove the disused vehicle, machine or part or the rubbish or other refuse from the land or take those necessary steps within the period stated in the notice, except if -
 - (i) that person produces a written permission of the Agency authorising the presence of that vehicle, machine, part, rubbish or other refuse on that land under the circumstances in question; or
 - (ii) in the case of a person so entitled, that person satisfies the Agency of not having deposited or left the vehicle, machine, part, rubbish or other refuse on that land and not having permitted its being deposited or left there and, where it was deposited or left there by the agent or employee of the person so entitled, of not having been aware of that fact; and
- (b) the Agency, if the vehicle, machine, part, rubbish or other refuse has not been removed within the period stated in the notice and if satisfied that no person holds a written permission of the Agency in terms of paragraph (a)(i), may remove the vehicle, machine,

part, rubbish or other refuse from that land and may recover the costs of the removal or of those steps from the person who in terms of that subsection was under a duty to take the removal or take the necessary steps.

(4) Any person who contravenes a provision of subsection (1) is guilty of an offence and liable on conviction to a term of imprisonment not longer than six months, or a fine, or to both the term of imprisonment and the fine.

Trading on road or in building restriction area

74. (1) Except as provided in subsection (2), no person may without the Agency's written permission or contrary to the terms of the written permission, carry on any trade or expose, offer or manufacture for sale any goods on a road or in a building restriction area.

(2) Subsection (1) does not apply to any person who, after the date on which a road is declared continues, on land forming part of the road or building restriction area, any business or undertaking which was carried on or conducted on that land immediately before that date, unless that person, by notice in writing, has been directed by the Agency to discontinue the business or undertaking before a date stated in the notice, and that date has arrived.

(3) Any person who contravenes a provision of subsection (1) is guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months, or a fine, or to both the term of imprisonment and the fine.

CHAPTER VII: ASSIGNMENT OF LAW, REGULATIONS, SHORT TITLE AND COMMENCEMENT

Assignment of laws

75. The Minister may add, by notice in the *Gazette*, any law the administration of which is assigned to the Road Fund board and Roads Agency board respectively, to the Schedule to this Act by so naming that law in the notice.

Regulations

76. The Minister, after consultation with the Road Fund board and the Roads Agency board, may make regulations with reference to -

- (a) the administration of the Road Fund and the revenue of the Fund;
- (b) the operation of the Roads Agency;
- (c) matters that will promote the objectives of this Act; and
- (d) anything which in terms of this Act may or must be prescribed, governed, provided for, determined or specified, by regulation.

Short title and commencement

77. This Act is called the Road Network Financing and Management Act, 19.., and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE 1

Administration of laws assigned to Road Fund board/Roads Agency board