

General Notice**Notice ... of ...****DEPARTMENT OF TRANSPORT****Draft Road Traffic Management Corporation Bill, 1998**

The above-mentioned Draft Bill is published in Schedule A for comment.

The Draft Road Traffic Management Corporation Levies Bill is published in Schedule B for comment.

The Road Traffic Management Corporation framework necessitates several amendments to current legislation:--

1. The Draft National Road Traffic Amendment Bill is published for comment in Schedule C
2. The Draft Provincial Road Traffic Amendment Bill is published for comment in Schedule D
3. The Draft Administrative Adjudication of Road Traffic Offences Bill is published for comment in Schedule E.

Interested parties are invited to submit written comments no later than 30 November 1998 to:

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The Draft Bill is explained in the Explanatory Note preceding Schedule A.

EXPLANATORY MEMORANDUM

1. On 17 March 1998, the Director-General of Transport presented an innovative proposal to MINCOM concerning the creation of a Road Traffic Management Corporation in South Africa (MINCOM comprises the nine members of the Executive Councils of the provinces and the Minister of Transport, who is the chairperson). The idea was designed to counter the legacy of lack of investment, commitment and resources in road traffic and to avert the current crisis in road traffic management as witnessed by the extent of lawlessness and the exceptionally high death tolls on the roads. The Corporation would be able to address simultaneously all functional areas which cover road traffic safety and to perform its work in various areas of Government activity such as vehicle registration and licencing, vehicle roadworthiness and testing stations, traffic law enforcement and accident investigation and reconstruction.

MINCOM supported the proposal and requested a study team, comprising provincial and national personnel, to undertake a detailed study and examine the implications of implementation of a Corporation model.

Several meetings took place to investigate thoroughly how best to address existing problems. These meetings identified, as major factors contributing to the bleak picture, the lack of --

- a proper and tight institutional framework conducive to co-ordinated road traffic management and responsive to functional needs

- co-operation and co-ordination in the management strategy in respect of the different functional areas
- co-ordination in the manner in which the private sector is engaged
- standardised regulating contracts for appointment of public and private sector entities as agents
- effective consultative and communication structures
- a strong resource base
- adequate training, equipment, manpower levels and infrastructure
- correlation between tariffs and the cost of operations
- unified authority and responsibility
- uniform legislation, procedure, tariff structures, fines and collection levels
- adequate utilisation of checks and balances and management information systems

2. The model allows existing provincial and local government structures to continue performing road traffic functions on an agency basis. Quality of service will be closely controlled and monitored. Funding will be secured and the model ensures renewed investments in personnel, training and equipment. The draft legislation was preceded by various studies namely --

- a status quo study of current South African road traffic and other legislation including:
 - Road Traffic Act, 1989 and regulations
 - Road Traffic Act, 1996 and regulations
 - National Road Safety Act, 1972
 - Fiscal Relations Act, 1997
 - Administrative Adjudication of Road Traffic Offences Act, 1998
 - provincial road traffic legislation
- a status quo study of the South African Constitution and current constitutional practice in other sectors
- a comparative survey of institutions and constitutional practice in the US, Canada, Australia, Germany, India and the Netherlands.

A discussion document, drafted in bill form, was prepared for consideration by MINCOM, to facilitate discussion and consultation. The legislative model is premised on co-operative governance and output has been tailored to the specific needs that had been identified.

3. On 28 August 1998, the Committee of Land Transport Officials (COLTO) consisting of the heads of the Transport Departments of the provinces and the National Department of Transport, presented MINCOM with draft framework legislation designed to --

- establish the Corporation as a statutory body with responsibility for managing road traffic in South Africa, steered by the Minister and MECs
- create co-operative structures and procedures
- ensure coherent implementation of national policy
- supplement existing resources
- extend the capacity of government and decrease dependence on public funding
- align the process with the user-pays principle
- improve service provision and protection of existing assets and infrastructure
- render the Corporation accountable for all expenditure while collecting all revenue.

The Road Traffic Management Corporation Bill provides institutional mechanisms aimed at promoting and realising the following strategic objectives. In the public interest, these are to --

- a. enhance the overall quality of road traffic service provision and, in particular, to ensure acceptable levels of safety, security, order, discipline and mobility on roads and to protect road infrastructure and the environment through the adoption of innovative practices and implementation of innovative technology;
- b. phase out, where appropriate, public funding and phase in private sector investment in road traffic on a competitive basis;
- c. introduce commercial management principles to inform and guide road traffic governance and decision-making in the interest of enhanced service provision;
- d. optimise the utilisation of public funds by --

- i. limiting investment of public funds to road traffic services which meet a social, political or non-commercial strategic objective and which have poor potential to generate a reasonable rate of return; and
 - ii. securing, where appropriate, full cost recovery on the basis of the user-pays principle;
- e. regulate, strengthen and monitor intergovernmental contact and co-operation in road traffic matters;
- f. improve the exchange and dissemination of information in road traffic matters;
- g. stimulate research in road traffic matters and effectively utilise the resources of existing institutes and research bodies;
- h. develop human resources in the public and private sectors that are involved in road traffic; and
- i. establish the Road Traffic Management Corporation as a partnership between national, provincial and local levels of government by --
 - i. effecting the pooling of road traffic powers and resources of national and provincial levels of government in support of enhanced co-operative and co-ordinated road traffic strategic planning, regulation, facilitation and law enforcement;
 - ii. focussing government on effective strategic planning, regulation, facilitation and monitoring to ensure private sector investment in road traffic; and
 - iii. extending national and provincial governments' collective capacity through a partnership with local authorities to govern road traffic.

The Road Traffic Management Corporation Bill responds to these objectives by --

- establishing and defining the structure of the Corporation and enabling it to --
 - advise
 - execute road traffic services
 - facilitate and promote private sector investment
 - execute directives
 - undertake research
- defining the relationships among the organs of the Corporation, their functions and their interaction with, particularly, provincial and local authorities and the private sector.

4. The institutional model outlined below is representative of the framework upon which it was possible to obtain the greatest degree of consensus to date. The drafting process has had to demonstrate a keen awareness of the need to leave intact constitutional powers and competencies. The model on which the draft legislative framework is based does not require constitutional reform, and brings these powers and competencies together to be exercised collectively, through the Corporation. This approach ensures, moreover, that ad-hoc informal intergovernmental institutions will not proliferate.

The legislative framework is being developed on an ongoing basis and the institutional structure of the initial draft has been simplified and refined. The model impacts on all spheres of Government. Opportunity for comment and input, discussion and consultation is allowed and will be used to clarify issues surrounding the Corporation and its organs.

5. The decision of the MINCOM meeting of 28 August had particular implications for the institutional framework of the Corporation. On that date, it took the following decisions --

- to establish the Minister and Members of the Executive Council as the directors of the Corporation
- not to support the idea of a majority private sector board.

In line with revision of the Road Traffic Management Corporation Bill to align it with the MINCOM decision, the Bill provided for a Shareholders Committee comprising the Minister and MECs as the top structure of the Corporation. Other principal organs of the Corporation comprise --

- the chief executive officer

- the managers of business units.

To retain a measure of flexibility in the legislation, the Shareholders Committee is permitted, should it so wish, to appoint a board to undertake such functions as may be delegated to it. This "backdoor" was inserted because it may eventually become clear that the Shareholders Committee would need to delegate some of its functions. If a board were to be established, the Shareholders Committee may delegate certain functions to it without shifting or altering its political responsibility. In addition, its composition will be determined by the preferences of the Shareholders Committee, i.e. it could have public or private sector members in a ratio determined by the Shareholders Committee.

6. On 18 September, MINCOM approved the results of the investigation, the model proposed and the framework legislation for the creation of the Corporation. MINCOM also decided to consult the executive. Provinces took it upon themselves to approach the various executive committees, where needed, with the assistance of the task team. MINCOM also decided that the consultation process with the local authorities, labour unions, licencing officials, law enforcement officers and the public must be undertaken by the provinces.

The Minister is scheduled to meet with the Intergovernmental Forum comprising the Premiers during November 1998.

7. The Road Traffic Management Corporation Bill pulls together all the functions of the Shareholders Committee into one section to provide a "snapshot" of how the Corporation will manage and execute road traffic functions. Its primary functions include monitoring of the performance of the Corporation, deciding whether and when to propose amending legislation and new policies, and to approve the "governing instruments" of the Corporation, such as the business and financial plan and a governance agreement with the board if a board is established.

8. The MINCOM decision of 28 August also implied that the Shareholders Committee must have the powers and competencies required to fulfil their task. The Corporation requires powers to execute its functions. Ideally, the legislation should describe the Corporation's powers in respect of each of its functional areas. Given the urgency of the need to institutionalise co-operation in road traffic, reliance must be placed on functions as they exist in current legislation, principally the National Road Traffic Act, 1996 (Act No. 93 of 1996) and its regulations together with provincial legislation.

National and provincial governments retain their respective and differentiated policy-making, regulatory and monitoring functions but exercise these collectively and co-operatively. In addition to functions defined in current legislation as amended, the Corporation will execute functions as conferred by contract. The MEC of a province may enter into an agreement with the Corporation in terms of which the Corporation must perform the stipulated functions of the MEC in terms of the National Road Traffic Act, 1996 or any other law relating to road traffic, on behalf of the MEC. Thus, the Corporation has the powers of a statutory juristic person, the powers contained in road traffic legislation and the powers conferred by contract, thus remaining within the line drawn by exclusive provincial powers in terms of the Constitution Act, 1996 (Act No. 108 of 1996).

The spirit of co-operative government is brought to bear on concurrent national and provincial competencies in terms of the Constitution Act, 1996 by means of the Shareholders Committee. National, provincial and local governments exercise their powers individually and collectively. The "contracted" functions and management of operations by means of contracts will enable the Corporation to fulfil its core role as a co-ordinatory body in respect of the different spheres of government and involvement of the private sector.

9. The chief executive officer manages and controls the day-to-day affairs of the Corporation in accordance with a business and financial plan and must, amongst others, give effect to directives of the Shareholders Committee, take charge of strategic planning and monitoring of business units, and assign functions to managers of business units if authorised to do so.

The chief executive officer has a strong monitoring function within the Corporation and as regards its performance. In particular, the chief executive officer monitors the Corporation's involvement of

local authorities and the private sector in road traffic service provision as well as its compliance with public service obligations. The chief executive officer therefore functions as a "check" in respect of the Corporation's relations with the public at large, local authorities and private sector participants. In support of its monitoring function, the chief executive officer is empowered to investigate complaints made against the Corporation relating to non-compliance with its functions.

The relationship between the Shareholders Committee and chief executive officer is given content through the conclusion of a performance contract. Similar contracts are concluded between the chief executive officer and the managers of business units.

The managers of business units manage units that may be established to carry out the functions in certain road traffic functional areas. In line with the flexible nature of the draft legislation, the business units to be established are not defined as this may unduly restrict dynamic commercially-based responses to changing realities. Business units are, however, required to be managed on a commercial and ring-fenced basis and independently of each other.

10. In the interest of a comprehensive business and financial plan, the Shareholders Committee must agree on the extent to which resources currently vesting in national and provincial governments will be transferred to the Corporation. The transferral of resources will also involve personnel, presently in the employ of the national and provincial Departments of Transport, who elect to leave the civil service to be permanently employed by the Corporation. The Minister or a MEC may, after consultation with the Shareholders Committee, the Public Service Commission and the Head of Department, with the written consent of an official in the employ of the national or provincial Department of Transport concerned, make available the services of that official to the Corporation.

11. The Road Traffic Management Corporation Bill goes hand in hand with a revision of road traffic laws to reflect the new intergovernmental relationship. The establishment and operation of the Corporation implies several amendments to the National Road Traffic Act, 1996. Furthermore, in the interest of uniformity across the country, the functions spelt out in provincial legislation and the portions of the provincial enactments relevant to the Corporation must be incorporated at the national level. Functions legislated on at the provincial level need to be "drawn up" to the National Road Traffic Act, 1996, without necessarily changing the competent authority. Care has been taken not to take away any of the sources of income for provincial authorities. Provincial acts still address aspects falling outside the ambit of the Corporation, for example the setting of provincial licence fees.

The Corporation requires for its operation, besides a National Road Traffic Amendment Act and several provincial Amendment Acts, two other components in support thereof --

- a Road Traffic Management Corporation Levies Act, 1998
- an Administrative Adjudication of Road Traffic Offences Amendment Act, 1998.

As part of the process of reform, the National Road Safety Act, 1972 will be repealed in its entirety.

12. Reliance on national and provincial road traffic legislation is a transitional remedy. In the medium term, once the Corporation is operational, complete revision of all functional areas in the National Road Traffic Act, 1996 will be necessary to address shortcomings in the legislation in the areas where the Corporation is active. The Corporation will, as a matter of priority, recommend a revised legislative framework for itself which will provide for an amplified road traffic policy framework to "fill gaps" in existing road traffic legislation in respect of certain functional areas.

13. The Corporation is empowered to undertake the road traffic function itself or to outsource the function to the private sector and provincial and local authorities. For this purpose, the legislation enables outsourcing on a contractual basis and also enables optimisation of private investment through --

- the trading of shares in companies in which the Corporation is a shareholder

- the conclusion of joint ventures between the Corporation, the private sector, other state organs and even foreign state entities.

14. The business and financial plan of the Corporation is the strategic planning "map" for the execution of the Corporation's functions. For the purpose of mobilising private sector involvement in the provision of road traffic services, the plan must also specify, in relation to each traffic-related asset or service, amongst others --

- the nature of private sector investment /services to be procured
- the release action to be undertaken, including the investment or concession contracts to be utilized
- whether the asset or service can be operated at a reasonable rate of return or whether provision can only take place in terms of a negative concession
- the nature and levels of essential public services which must be ensured
- the time scales in which private sector participation is to take place.

15. The Road Traffic Management Corporation Bill establishes an enabling framework for private investment in road traffic in accordance with the business and financial plan. It sets out a number of options for the investment of private capital in a road traffic facility or service. These include --

- acquisition of a state-owned road traffic facility
- trading of shares in a state-owned road traffic related company through the purchase or exchange of shares
- acquisition of shares by a state-owned enterprise (which includes a company) in a project company in terms of a joint equity venture
- the conclusion of appropriate road traffic facility and services investment contracts.

The Bill allocates powers to the Shareholders Committee to drive the process of increased private sector involvement and lays down certain conditions and procedures to be followed in the interest of transparency. In particular, it specifies a broad range of investment contracts to facilitate private investment in road traffic facilities and services. The Corporation must, where appropriate, develop standard documentation and adhere to procurement procedures in accordance with prescribed guidelines.

16. The Road Traffic Management Corporation Bill provides for compliance and monitoring checks and balances to protect the public interest in the light of increased private sector involvement. The Shareholders Committee assumes final responsibility for ensuring that compliance and monitoring are undertaken and is supported in this by --

- the chief executive officer (who is empowered to hear and investigate complaints and take remedial action)
- the managers of business units
- the board, upon its establishment.

17. The Corporation is funded from a number of sources. These include monies that may be prescribed in terms of regulations under the Road Traffic Management Corporation Bill (including monies charged by the Corporation for the sale of services); levies imposed under section 2 of the Road Traffic Management Corporation Levies Act, 1998; fees, fines and penalties payable to the Corporation as an issuing authority in terms of the Administrative Adjudication of Road Traffic Offences Act, 1998; interest on invested cash balances; loans; donations and monies appropriated by

Parliament.

18. The Road Traffic Corporation Bill concludes with a number of miscellaneous provisions including provisions aimed at encouraging innovative projects; procedures to be followed by the Corporation in conducting enquiries; procedures and responsibilities in the development of regulations; limitation of liability and interim arrangements.