

REPUBLIC OF SOUTH AFRICA

CROSS-BORDER ROAD TRANSPORT BILL

(As amended by the Portfolio Committee on Transport (National Assembly))

(MINISTER OF TRANSPORT)

[B 10B—98]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP OORGRENSPADVERVOER

(Soos gewysig deur die Portefeuljekomitee oor Vervoer (Nasionale Vergadering))

(MINISTER VAN VERVOER)

[W 10B—98]

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BILL

To provide for co-operative and co-ordinated provision of advice, regulation, facilitation and law enforcement in respect of cross-border road transport by the public and private sectors; to that end, to provide for the establishment of the Cross-Border Road Transport Agency; to repeal certain laws; and to provide for matters connected therewith.

PREAMBLE

SINCE there is a need to improve the unimpeded flow by road of freight and passengers in the region, to liberalise market access progressively in respect of cross-border freight road transport, to introduce regulated competition in respect of cross-border passenger road transport and to reduce operational constraints for the cross-border road transport industry as a whole;

AND SINCE there is a need to enhance and strengthen the capacity of the public sector in support of its strategic planning, enabling and monitoring functions;

AND SINCE there is a commitment to empower the cross-border road transport industry to maximise business opportunities and to regulate themselves incrementally to improve safety, security, reliability, quality and efficiency of services;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

PART 1

Definitions

Definitions

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

- (i) “Agency” means the Cross-Border Road Transport Agency, established by section 4; (i)
- (ii) “agreement” means an agreement entered into under section 2(1); (xiv)
- (iii) “Board” means the Board of the Agency; (xviii) 10
- (iv) “cabotage” means transport undertaken on a public road by a foreign carrier with a vehicle which involves—
 - (a) the unloading or offloading of freight or passengers between two points in the Republic; or
 - (b) the unloading of freight or passengers in the Republic for conveyance to a third state which is not the state of registration of the vehicle used for such transport and where such state of registration is not traversed; (iv) 15

- (v) “competent authority” means an authority designated as such in the legislation of a foreign state or in any agreement entered into under section 2(1); (ii)
- (vi) “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); (viii) 5
- (vii) “cross-border road transport” means the transport of passengers for reward or the transport of freight to or from the Republic crossing or intending to cross its borders into the territory of another state or in transit across the Republic or the territory of another state with a vehicle on a public road; (xv)
- (viii) “Director-General” means the Director-General of the Department of Transport; (v) 10
- (ix) “executive arrangement” means an arrangement between the Minister and his or her counterpart in a foreign state regarding the implementation or taking of practical measures to facilitate the smooth flow of cross-border road transport between the Republic and that foreign state; (xxiv) 15
- (x) “extraterritorial jurisdiction” means the power that one competent authority has to issue a permit to a person to undertake cross-border road transport to or in transit through the territory of another competent authority with which an agreement has been concluded as contemplated in section 2(1); (vii)
- (xi) “foreign carrier” means a carrier who undertakes cross-border road transport with a vehicle which is registered in a state other than the Republic; (iii) 20
- (xii) “*Gazette*” means the *Government Gazette*; (xxi)
- (xiii) “Minister” means the Minister of Transport; (xi)
- (xiv) “national road transport inspector” means a road transport inspector appointed under section 37; (xii) 25
- (xv) “owner”, in relation to a vehicle registered in any state under the law governing the registration of vehicles in that state, means the person who is its owner for the purposes of that law; (vi)
- (xvi) “permit” means— 30
- (a) a cabotage permit issued in respect of a vehicle for a period of three months, six months or one year or for a fixed number of journeys;
- (b) a cross-border road transport permit issued in respect of a vehicle for a period of three months, six months or one year or for a fixed number of journeys authorising the transport of freight or passengers on specified routes; or 35
- (c) a temporary cross-border road transport permit or cabotage permit issued in respect of a vehicle for a maximum period of 14 days authorising the transport of freight or of passengers on specified routes or cabotage, as the case may be; (xvii)
- (xvii) “prescribed” means prescribed by regulation by the Minister under section 51; (xviii) 40
- (xviii) “public road” means any road declared or recognised as a public road under any law, and includes any road, street, throughfare or other place (whether a throughfare or not) to which the public or any section of the public has a right of access; (xvi) 45
- (xix) “Regulatory Committee” means the body established by section 13; (xix)
- (xx) “renewal” means the renewal of a permit on or before the date of expiry of the permit; (ix)
- (xxi) “Republic” means the Republic of South Africa; (xx)
- (xxii) “reward” means any reward received in terms of a contract concluded for the hiring of a vehicle and a driver or the hiring of a vehicle and the separate hiring of a driver; (xxv) 50
- (xxiii) “South African carrier” means a carrier who undertakes road transport with a vehicle which is registered in the Republic; (xxii)
- (xxiv) “this Act” includes any notice, regulation or schedule made under it; (x) 55
- (xxv) “Tribunal” means the Transport Appeal Tribunal established by section 2 of the Transport Appeal Tribunal Act, 1998; (xxiii)
- (xxvi) “unauthorised transport” means transport with a vehicle on a public road without an applicable permit or in conflict with the permit conditions; (xiii) and 60
- (xxvii) “vehicle” means—
- (a) in relation to cross-border freight road transport, any mechanically-propelled road vehicle—

- (i) which is constructed, adapted or used for the carriage of freight, excluding a semi-trailer and trailer in the case of an articulated vehicle; and
- (ii) which either by itself or as part of an articulated vehicle exceeds a maximum gross mass of 3 500 kg; 5
- (b) in relation to cross-border passenger road transport, any mechanically-propelled road vehicle which is constructed or adapted for the conveyance of passengers or any other vehicle which is used to convey passengers; and
- (c) in relation to cabotage, any mechanically-propelled road vehicle and, in the case of an articulated vehicle, also a trailer and semi-trailer. (xxvi) 10

PART 2

Road transport agreements with other states

Authorisation to conclude road transport agreements

2. (1) The Minister may, subject to the provisions of the Constitution, enter into an agreement with another state whereby arrangements are made with that state to control and regulate cross-border road transport between the Republic and that state based on reciprocity, similar treatment and non-discrimination and where appropriate, extraterritorial jurisdiction. 15

(2) The agreement must also provide for— 20

- (a) its entry into force;
- (b) the procedure to be followed for amendment of the agreement;
- (c) the rights of the parties thereto in the event of substantial breach thereof;
- (d) the suspension of the agreement or of any relevant provision thereof; and
- (e) the procedure to be followed in the event of a dispute regarding the interpretation or application thereof. 25

(3) The agreement must be promulgated by the President by Proclamation in the *Gazette* and will have the force of law in the Republic with effect from the date of promulgation or any later date specified in the Proclamation.

(4) Any amendment of the agreement, if and to the extent approved by Parliament, must be promulgated in the same manner as mentioned in subsection (3) whereupon such amendment will have the force of law in the Republic. 30

(5) Where a state with which an agreement has been entered into breaches a substantial provision thereof the Minister must, subject to the provisions of the agreement— 35

- (a) inform the other state of such breach and request it to rectify such breach within a reasonable period;
- (b) upon failure of the state to act in accordance with the request as contemplated in paragraph (a), by notice in the *Gazette*, publish his or her intention to suspend the application of the agreement in part or in full; and 40
- (c) by notice in the *Gazette*, publish the date on which the suspension of the application of the agreement in part or in full will come into force.

Equal treatment

3. (1) The Minister may, in the absence of an agreement between the Republic and another state to the contrary, when another state accords treatment to South African carriers which is less favourable than the treatment that is being accorded by the Republic to carriers from that state, by 30 days' notice in the *Gazette*— 45

- (a) despite any provision to the contrary in this Act, prohibit the Regulatory Committee from considering any application by a carrier of that state for the granting, renewal, transfer or amendment of any permit, including a permit 50

- that authorises cabotage, to undertake cross-border road transport to or from any place or area or between places or areas specified in the notice; and
- (b) despite any provision to the contrary in this Act or the permit concerned, prohibit a carrier of that state who holds a permit to undertake cross-border road transport to or from any place or area or between places or areas specified in the notice. 5

(2) The Minister may at any time amend or withdraw a notice referred to in subsection (1) by notice in the *Gazette*.

PART 3

Cross-Border Road Transport Agency 10

Establishment of Agency

4. (1) A juristic person, known as the Cross-Border Road Transport Agency, is hereby established.

(2) Subject to the provisions of this Act, the Agency is capable in law of instituting, defending or opposing legal proceedings of whatever nature, of purchasing or otherwise acquiring, holding and alienating or otherwise disposing of movable or immovable property or any other real right or interest, of entering into contracts or doing such other things as juristic persons may by law perform and do. 15

(3) The Agency may perform all such acts and do such things as are reasonably necessary for or ancillary, incidental or supplementary to the performance of its advisory, regulatory, facilitatory and law enforcement functions as contemplated in this Act. 20

Representation by Board

5. (1) The Agency must be governed and represented by its Board.

(2) The Minister must, after consulting with the relevant stakeholders, appoint the members of the Board consisting of— 25

- (a) the Chairperson, who is fit on account of his or her profile and expertise in the cross-border road transport industry and is not employed by the State;
- (b) the Deputy Chairperson, who is fit on account of his or her profile and expertise in the cross-border road transport industry and is not employed by the State; and 30
- (c) not more than eight other members, of whom not more than—
- (i) two who are not employed by the State and who are fit on account of their technical expertise in the cross-border road transport of freight;
- (ii) two who are not employed by the State and who are fit on account of their technical expertise in the cross-border road transport of passengers; and 35
- (iii) four are persons selected by the Minister from a list of names of persons which, at the Minister's request by notice in the media, have been submitted to him or her within the period specified in the notice by any association, institution, organisation or individual with an interest in the cross-border road transport industry, the labour and consumer sector. 40

(3) Prior to the appointment of a person to the Board, the Minister must—

- (a) by notice in the *Gazette*, publish his or her intention to appoint that person and invite public comment or objections within the period specified in the notice; and 45
- (b) take into account any comment or objection received by him or her in accordance with such notice.

(4) The Minister may nominate a representative to participate in a non-voting capacity in the deliberations of any meeting of the Board or the Regulatory Committee.

Disqualifications

6. No person may be appointed as a member of the Board if that person—
- (a) is a minor;
 - (b) is of unsound mind;
 - (c) is an unrehabilitated insolvent; or
 - (d) has been convicted of an offence and sentenced to imprisonment without the option of a fine unless the Minister is of the opinion that the said person is fit to serve as a member of the Board taking into account the nature of the offence and all the relevant circumstances relating to that offence.

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Period of office of Chairperson, Deputy Chairperson and other members

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7. (1) The Chairperson and Deputy Chairperson are appointed by the Minister for a period not exceeding three years.

(2) (a) Subject to the provisions of paragraph (c), the other members of the Board are appointed for a period not exceeding three years.

(b) One half of the members of the Board, referred to in section 5(2)(c), must vacate their offices every 18 months.

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(c) For the purposes of paragraph (b), such four of the eight members of the Board appointed to the first Board constituted after the commencement of this Act, must be determined in accordance with the provisions of Schedule 1 and must vacate their offices upon the expiry of a period of 18 months as from the date of their appointment, whereas the four remaining members of the Board must vacate their offices 18 months later.

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(3) The members of the Board, including the Chairperson and the Deputy Chairperson, are eligible for reappointment but not for more than three consecutive terms of office, and individual members may be appointed for different periods and on different conditions.

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Chairperson and Deputy Chairperson

8. (1) The Deputy Chairperson acts as Chairperson of the Board whenever the Chairperson is for any reason unable to act as such.

(2) Whenever both the Chairperson and the Deputy Chairperson of the Board are absent or unable to fulfil any of the functions of the Chairperson, the members of the Board designate any other member of the Board to act as Chairperson of the Board during such absence or incapacity.

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Alternate members

9. (1)(a) The Minister may, subject to the provisions of subsection (2), at the request of a member of the Board appoint an alternate member for that member.

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(b) When a member of the Board is absent from a meeting the alternate member concerned may attend the meeting, and when so attending, the alternate member is deemed to be a member of the Board.

(2) No alternate member is appointed for the Chairperson or Deputy Chairperson or a member referred to in section 5(2)(c)(i) and (ii).

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Notice of appointment

10. The Minister causes notice of the appointment of a member or alternate member of the Board, and the date of the appointment, to be published in the *Gazette*.

Vacation of, and removal from, office

11. (1) A member of the Board vacates his or her office if that member—

- (a) becomes subject to any of the disqualifications for appointment referred to in section 6; or
- (b) dies or is removed from office under subsection (2) or resigns by notice in writing to the Minister.

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(2) The Minister may remove from office any member of the Board—

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(a) who has failed to comply with any condition of his or her appointment;

- (b) who has been guilty of improper conduct or has neglected his or her duties as a member of the Board;
- (c) who is unable to perform his or her duties efficiently as a member of the Board; or
- (d) if he or she is absent from two consecutive Board meetings without consent of the Chairperson or the Board or without proper cause. 5

Conditions of service of members or alternate members of Board

12. Members and alternate members of the Board are appointed on the conditions of service, including the payment of remuneration and allowances determined by the Minister in consultation with the Minister of Finance. 10

Regulatory Committee

13. A Regulatory Committee is hereby established comprising—
- (a) the Chairperson and Deputy Chairperson of the Board, who also serve as Chairperson and Deputy Chairperson of the Regulatory Committee;
 - (b) the four members referred to in section 5(2)(c)(i) and (ii); and 15
 - (c) the Chief Executive Officer referred to in section 14(1)(a).

Staff of Agency

14. (1) The Board must, subject to the approval of the Minister with regard to staff and resources, establish its own administration to provide the required administrative, secretarial, research and technical assistance to the Board in support of the execution of its advisory, regulatory, facilitatory and law enforcement functions and to this end the Board must appoint— 20

- (a) the Chief Executive Officer;
- (b) such other staff as the Board may deem necessary; and
- (c) road transport inspectors. 25

(2) The Board may pay to the persons in its employ such remuneration and allowances and provide them with such pensions and other benefits as the Board may determine with the approval of the Minister, in consultation with the Minister of Finance.

Appointment of experts

15. (1) The Board may appoint experts, including experts from other states, with a view to assisting the Board in the execution of its functions. 30

(2) The terms, conditions, remuneration and allowances applicable in respect of any expert by virtue of his or her appointment in terms of subsection (1), and the work to be performed or service to be rendered by virtue of such appointment, must be determined in a written agreement entered into for that purpose between the Board and the expert concerned. 35

Meetings and decisions

16. (1) The first meeting of the Board must be held at the time and place determined by the Minister, and thereafter meetings are held at the times and places determined by the Chairperson of the Board. 40

(2) The Board must meet at least four times per year.

(3) The Board must determine the time and place for the first meeting of the Regulatory Committee.

(4) The Board must devise the procedures for its meetings and decisions and those of the Regulatory Committee: Provided that a quorum for a meeting— 45

- (a) of the Board is fifty percent of the appointed members as provided for in section 5(2); and
- (b) of the Regulatory Committee is fifty percent of the members of the Committee as provided for in section 13.

(5) No decision of the Board is invalid by reason only of the fact that, when such decision was taken, a casual vacancy existed on the Board or a person was disqualified 50

under section 6 from being a member, whether or not such person's concurrence was necessary for the taking of that decision.

Procedures

17. (1) The Board or the Regulatory Committee, as the case may be, may, for the purpose of dealing with any matter before it in terms of this Act— 5
- (a) allow any person affected by or interested in such matter, or the duly authorised representative of such a person, to appear before it and—
 - (i) to give evidence or make oral representations relevant to such matter;
 - (ii) to call witnesses and lead evidence on any question relevant to such matter; or 10
 - (iii) to question any person who testified as a witness in such matter;
 - (b) by a prescribed notice served in the prescribed manner by an authorised officer or sheriff, summon any person to appear before it at a specified time and at a specified place to give evidence in connection with any matter which may be reasonably necessary to the meeting or to produce any book, plan or other document or article in his or her possession or under his or her control which may be reasonably necessary to the meeting; 15
 - (c) call upon any person present in or at the place where such matter is dealt with by it, to appear before it to give evidence in connection with any matter which may be reasonably necessary to the meeting or to produce any book, plan or other document or article in the possession or under the control of that person which may be reasonably necessary to the meeting; 20
 - (d) question any person appearing before it as a witness; or
 - (e) refuse to hear any person appearing before it as a witness who refuses to be sworn in or to be affirmed. 25
- (2) If a person summoned under subsection (1) fails to appear at a meeting of the Board or Regulatory Committee, as the case may be, or fails to remain in attendance at such meeting, such person is guilty of an offence.
- (3) Any person called upon to give evidence under this section may be assisted by counsel, an attorney or an agent. 30
- (4) (a) Where any person gives evidence in terms of this section and is obliged to answer questions which may incriminate him or her, where he or she is to be tried in a criminal trial, the person presiding at the meeting must order that such part of the proceedings be held *in camera* and that no information regarding such information may be published in any manner. 35
- (b) No evidence regarding any questions and answers, as contemplated in paragraph (a), is admissible in any criminal proceedings, except in criminal proceedings where the person stands trial on a charge relating to the administering of an oath or the administering of an affirmation or the giving of false evidence or the making of a false statement in connection with such questions and answers, and in criminal proceedings relating to a failure to answer lawful questions fully and satisfactorily. 40
- (c) Any person who contravenes any provisions of an order made in terms of paragraph (a), is guilty of an offence and on conviction liable to the penalty mentioned in subsection (5) of section 154 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977). 45
- (5) Any self-incriminating evidence obtained during the course of any questioning as contemplated under subsection (1) must not be used in criminal or civil proceedings which may result from the meeting.

(6) The person presiding at the meeting at which any person appears as a witness as contemplated in subsection (1), may administer an oath or affirmation to the person appearing at the meeting.

Financing of Agency

- 18.** (1) The Agency must finance its operating and capital costs from— 5
- (a) money levied in connection with—
 - (i) the application and issuing of any permit; or
 - (ii) subject to the provisions of this Act, the dissemination of any useful information, advice or research findings;
 - (b) money collected from the imposition of fines in terms of this Act; 10
 - (c) donations; and
 - (d) money appropriated by Parliament from time to time for that purpose.
- (2) The Agency must utilise any money contemplated in subsection (1) in accordance with the statement of estimated expenditure referred to in subsection (3).
- (3) The Agency— 15
- (a) must in each financial year, at a time determined by the Minister, submit a statement of estimated income and expenditure in respect of its objectives and functions for the following financial year to the Minister and to the Minister of Finance for their approval; and
 - (b) may in any financial year submit adjusted statements of estimated income and expenditure to the Minister and the Minister of Finance for their approval. 20

Bookkeeping and auditing

- 19.** (1) The Agency must, in accordance with generally accepted accounting practice, keep such accounting and related records as are necessary to represent the state of affairs and business of the Agency fairly and to explain its transactions and financial position. 25
- (2) The Chief Executive Officer is the accounting officer of the Agency and charged with the responsibility of accounting for all money received and payments made by the Agency.
- (3) The accounting and related records of the Agency must be audited annually by the Auditor-General. 30

Banking account

20. The Agency must open and maintain one or more accounts with a bank registered finally as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990), in which there must be deposited the money received by the Agency and from which payments for it or on its behalf must be made. 35

Financial year

21. The financial year of the Agency must run from 1 July to 30 June of the following year.

Reporting

- 22.** (1) The Board must report to— 40
- (a) the Minister at least once every year on its activities, including its audited and approved financial statements in respect of all its business; and
 - (b) the Tribunal at least once a year on matters of mutual interest and, as the need arises, notify the Tribunal of problems which require its co-operation and co-ordination to resolve. 45
- (2) The Minister must table such report in Parliament within a reasonable time.

(3) Where the Chief Executive Officer exercises a power delegated under section 32, he or she must report to the Regulatory Committee on a quarterly basis in respect of the permits issued by him or her.

(4) The Regulatory Committee must submit quarterly reports to the Board providing information on the permits issued in the preceding quarter, and this must include information on any permit issued by the Chief Executive Officer by virtue of section 32. 5

PART 4

Scope and functions of Board

Functions of Board

23. The Board must— 10
- (a) advise the Minister on any aspect related to cross-border road transport policy;
 - (b) regulate access to the market by the road transport freight and passenger industry in respect of cross-border road transport by issuing permits;
 - (c) facilitate—
 - (i) the establishment of co-operative and consultative relationships and structures between public and private sector institutions with an interest in cross-border road transport; 15
 - (ii) the collection, processing and dissemination of relevant information;
 - (iii) the provision of training, capacity building and the promotion of entrepreneurship generally and, in particular, in respect of small, medium and micro-enterprises with an interest in cross-border road transport; and 20
 - (d) undertake road transport law enforcement in terms of the Act. 25

PART 5

Advisory functions of Board

Advisory functions 25

24. (1) The Board must advise the Minister, as the need arises or upon request of the Minister, on cross-border road transport policy matters, including strategies to counteract restrictive measures implemented by other states, the phasing in of measures to liberalise market access, strategies to reduce operational constraints, training needs and the contributory role of cross-border road transport in fulfilling the objective of integrated transport planning. 30

(2) The Board must advise and provide information to the Minister and the Department in the negotiation and renegotiation of cross-border road transport agreements contemplated in section 2(1) and executive arrangements contemplated in section 25(4). 35

PART 6

Regulatory functions of Board

Permit application

25. (1) No person may undertake cross-border road transport unless he or she is the holder of a permit. 40

(2) A South African carrier must, where an agreement referred to in section 2(1) exists and provides for extraterritorial jurisdiction, apply, in accordance with the provisions of the agreement and the regulations, to the Regulatory Committee for a permit authorising road transport from the territory of the Republic into or across the territory of any state with which the Republic has concluded such an agreement and from such territory back to the Republic. 45

(3) A foreign carrier must, where an agreement referred to in section 2(1) exists and provides for extraterritorial jurisdiction, apply, in accordance with the provisions of the

agreement and the regulations, to his or her competent authority for a permit authorising road transport from the territory of the state concerned into or across the territory of the Republic and from the territory of the Republic back to the territory of such state: Provided that the Regulatory Committee must, where required in terms of the provisions of such an agreement, consider the application of such foreign carriers and recommend to the competent authority whether or not to issue the carriers concerned with a permit. 5

(4) A South African carrier and a foreign carrier must, where an agreement referred to in section 2(1) exists but does not provide for extraterritorial jurisdiction or where the Minister has concluded an executive arrangement with a minister of another state in anticipation of concluding an agreement referred to in section 2(1), apply, in accordance with the provisions of the agreement and the regulations or the provisions of the executive arrangement, to the Regulatory Committee for a permit authorising the part of the road transport undertaken in the territory of the Republic. 10

(5) A South African carrier and a foreign carrier must, where no agreement referred to in section 2(1) exists, apply to the Regulatory Committee for a permit authorising the part of the road transport undertaken in the territory of the Republic. 15

(6) Subject to subsection (7), if more than one permit is issued in respect of the same vehicle, the holder of the permit must be the same person.

(7) Where a person, other than the holder of an existing permit applies for a permit in respect of the same vehicle, the Regulatory Committee must— 20

- (a) inform the existing permit-holder that an application in respect of the same vehicle has been received;
- (b) request the existing permit-holder to provide reasons within 14 days as to why the existing permit must not be cancelled; and
- (c) inform the existing permit-holder of and request his or her attendance on the date when the application will be considered by it. 25

(8) If the existing permit-holder fails to respond to a request as contemplated in paragraph (b) or (c), the Regulatory Committee may cancel the existing permit.

(9) If the existing permit-holder's permit is cancelled in accordance with subsection (8), the said permit-holder must return the cancelled permit to the Chief Executive Officer within 21 days. 30

(10) The Regulatory Committee may grant condonation for the permit-holder's failure to comply with the requests as contemplated in paragraph (b) or (c) upon good cause shown.

Temporary permits 35

26. (1) The Regulatory Committee must take the following into consideration in making its decision, in relation to any application for the granting of a temporary permit, based on the information presented to it by the applicant:

- (a) the state of registration of the vehicle;
- (b) the type of vehicle; 40
- (c) the type of goods or the number of passengers to be transported;
- (d) the existence of reasonable transport facilities by means of which goods or passengers can be transported; and
- (e) any other factor or circumstance which, in the opinion of the Regulatory Committee, must be considered with a view to the safety of the public. 45

(2) Where an application is granted, the Regulatory Committee may issue a permit subject to such conditions or requirements as it may deem necessary.

(3) The Regulatory Committee, upon receipt of an application for a temporary permit, may if it is of the opinion that the carrier is providing a service of a permanent nature, request such carrier to apply for a permanent cross-border road transport permit. 50

Freight transport

27. (1) The Regulatory Committee must take the following into consideration in

making a decision in relation to any application for the granting, renewal, transfer or amendment of permits for cross-border freight road transport based on the information presented to it by the Chief Executive Officer:

- (a) whether the applicant complies with the relevant provisions of the Road Traffic Act, 1989 (Act No. 29 of 1989); 5
- (b) whether the applicant has a good road transport law enforcement profile based on the information contained in the points demerit system, referred to in section 45;
- (c) whether the applicant has forwarded the completed consignment notes, as prescribed, in respect of the previous permits which were held by the applicant; 10
- (d) a foreign state's track record with regard to reciprocity where the applicant is from a state with which South Africa does not have an agreement providing for permits with extraterritorial jurisdiction;
- (e) in the case of an application for a cabotage permit, the following considerations: 15
 - (i) the foreign state's track record on granting cabotage permits to South African carriers;
 - (ii) whether a South African carrier is able to provide a similar service; and
- (f) any other factor which, in the opinion of the Chief Executive Officer, must be considered. 20

(2) Where an application is granted, the Regulatory Committee may issue a permit subject to such conditions or requirements as it may deem necessary.

Passenger transport

28. (1) The Regulatory Committee must take the following into consideration in making its decision in relation to any application for the granting, renewal, transfer or amendment of permits for cross-border passenger road transport based on the information presented to it by the Chief Executive Officer: 25

- (a) the considerations referred to in section 27(1)(a), (b), (d) and (e);
- (b) whether the applicant has forwarded the completed passenger lists, as prescribed, in respect of the previous permits which were held by the applicant; 30
- (c) the need for the particular service, taking into account the available transport facilities;
- (d) whether the applicant operates from the address furnished by him or her; 35
- (e) the ability of the applicant to provide the particular service;
- (f) having regard to the circumstances, whether it will be expedient in the public interest to grant him or her the permit; and
- (g) any other factor which, in the opinion of the Chief Executive Officer, must be considered. 40

(2) The onus rests on the applicant to prove paragraphs (b), (c), (d), (e) and (f) of subsection (1).

(3) Where an application is granted, the Regulatory Committee may issue a permit subject to such conditions or requirements as it may deem necessary.

Temporary replacement of vehicle 45

29. (1) In the event of a breakdown *en route*, a driver must be allowed to complete the specific journey with another vehicle on the authority of the permit issued to the vehicle which had broken down.

(2) The driver must make a sworn declaration regarding the nature of the breakdown, and where the broken-down vehicle can be inspected: Provided that the sworn declaration must be carried on the replacement vehicle. 50

(3) The permit-holder or the driver must allow any road transport inspector to inspect the broken down vehicle at the place where the latter vehicle is.

Withdrawal, suspension or variation of permit

30. (1) The Regulatory Committee may, subject to the provisions of subsections (2) 55

and (3) where a permit-holder or a person in his or her employ has been convicted of a road transport or road traffic offence in the Republic or in a state with which an agreement as contemplated in section 2(1), has been concluded, of its own accord or upon a request from the state with which such an agreement has been concluded, take one of the following steps: 5

- (a) withdraw or suspend for such period as it may deem, any permit granted by it;
- (b) revoke the permit subject to such conditions as may be imposed;
- (c) declare such permit-holder either permanently or for a specified period of time unfit to apply for a permit;
- (d) amend the conditions and requirements applicable to the permit held by the permit-holder, or determine such new conditions and requirements as the Regulatory Committee may deem fit. 10

(2) The Regulatory Committee must inform the permit-holder of the nature of and the reasons for the steps to be taken by it against him or her in terms of subsection (1), by delivering such notice personally or by registered post to the permit-holder. 15

(3) The permit-holder must, upon receiving the notice as contemplated in subsection (2), be entitled to a hearing by the Regulatory Committee if he or she lodges a written request with the Committee by registered post or by delivering such request by hand within:

- (a) ten days of such notice being mailed if such notice was dispatched by registered post; or 20
- (b) seven days of such notice being received by hand.

(4) The Regulatory Committee may grant condonation for the permit-holder's failure to comply with the request as contemplated in subsection (3) upon good cause shown.

(5) In taking any step under subsection (1), the Regulatory Committee must take into consideration all previous traffic or transport-related contraventions by the permit-holder concerned or by a person in his or her employ. 25

(6) Where a permit is affected by any step under subsection (1), and upon failure by the permit-holder to act under subsection (3), the permit-holder must return the permit within ten days after the lapsing of the period referred to in subsection (3) to the Chief Executive Officer. 30

Cabotage

31. (1) Cabotage is prohibited.

(2) The Regulatory Committee must give effect to the prohibition on cabotage, but may consider lifting the prohibition on cabotage and issue an appropriate permit in a case where— 35

- (a) the state of a foreign applicant accords a South African carrier equal treatment in this regard; or
- (b) it is satisfied that there is no South African carrier who can provide a similar service and where lifting the prohibition is in the best interest of the Republic. 40

(3) Where cabotage is permitted, any truck-tractor and trailer and semi-trailer used in combination for the purposes of such transport, must be registered in the same country.

(4) All existing cabotage permits held by foreign carriers will lapse within six months after the entry into force of this section of this Act: Provided that the holder of such cabotage permit may reapply in accordance with the provisions of subsection (2). 45

Delegation of powers

32. The Regulatory Committee may delegate powers to the Chief Executive Officer, or any other member of staff, in writing, to—

- (a) consider applications, in accordance with the prescribed procedure, for the granting, renewal, transfer or amendment of— 50
 - (i) permits for 14 days or three months to South African carriers who wish to undertake cross-border freight road transport in terms of an agreement

- referred to in section 2(1) which provides for extraterritorial jurisdiction and who have not transgressed a prescribed points demerit threshold;
- (ii) permits for a maximum of 14 days to South African carriers who wish to undertake cross-border passenger road transport in terms of an agreement referred to in section 2(1) which provides for extraterritorial jurisdiction and who have not transgressed a prescribed points demerit threshold; and
- (b) issue permits referred to in paragraph (a) subject to such conditions or requirements as may be deemed necessary where the application is granted.

Publication 10

33. (1) The Regulatory Committee must, before considering any application for the granting, renewal, transfer or amendment of a permit issued for either three months, six months or one year authorising cabotage or for the granting, renewal, transfer or amendment of a three-month, six-month or one-year permit for cross-border passenger road transport, publish in the *Gazette* the particulars of any application as may be prescribed and invite any person to make representations in the manner and within the time prescribed, in respect of such application, except where the agreement provides otherwise and subject to the provisions of subsection (2).

(2) No representations made by a foreign carrier pursuant to a publication in terms of paragraph (a) will be taken into account unless South African carriers are afforded an opportunity to make representations, after a similar publication procedure, as referred to in subsection (1), in the state where the foreign carrier is registered.

(3) The Minister may, in consultation with the Regulatory Committee and the relevant stakeholders, extend the publication procedure to freight transport.

Appeal 25

34. Where the Regulatory Committee has published or made known a decision in respect of an application for the granting, renewal, transfer or amendment of a cross-border road transport permit or a cabotage permit for freight or passengers:

- (a) the aggrieved applicant;
- (b) the holder of any permit issued by the Regulatory Committee for cross-border road transport of freight or passengers who is affected by the decision; or
- (c) any person otherwise interested in or affected by the decision of the Regulatory Committee;

may, in the manner and within the time prescribed, after the said decision was published or made known by the Regulatory Committee, appeal against such decision to the Tribunal.

PART 7

Facilitatory functions of Board

Facilitatory functions

35. (1) The Board must assist in the establishment and development of corridor-based and route-based co-operative and consultative relationships and structures based on co-operation between stakeholders and government, which may include adequate representation by—

- (a) transport authorities;
- (b) cross-border road transport carriers;
- (c) customs and excise authorities;
- (d) freight forwarding and clearing agents;
- (e) financial and insurance institutions;
- (f) trade and industry authorities and bodies;
- (g) border post authorities;
- (h) immigration authorities;
- (i) tourism groups; and

(j) any other designated stakeholder.

(2) The Minister may, upon request of the Board and in support of the development of the relationship referred to in subsection (1) prescribe guidelines for the establishment of cross-border road transport corridor-based or route-based consultative mechanisms.

(3) The Board must, in support of its functions, develop and maintain a cross-border road transport information database containing information obtained from any appropriate source, and devise the most appropriate ways to disseminate cross-border road transport information. 5

(4) The Minister must prescribe the type of information to be included in the database, who may access such information and the procedures to access the information. 10

(5) The Board must regularly assess its capacity and training needs and those of the Road Transport Inspectorate referred to in section 37 with a view to enhancing the performance of their functions.

(6) (a) The Board may assess the capacity and training needs of the small business undertakings engaged in cross-border road transport and encourage development in this regard, if necessary. 15

(b) The Board must devise and implement strategies to encourage the cross-border road transport industry to become more self-regulatory.

(7) The Board may co-operate with any other appropriate foreign institution or entity to facilitate training and capacity building with a view to promoting the unimpeded flow of cross-border road transport. 20

Consultation

36. (1) The Chief Executive Officer must in support of the execution of the Board's functions, consult upon request of the Board or as the need arises with any relevant international, national and provincial authorities and relevant stakeholders, including the labour and consumer sector, and develop and maintain appropriate stakeholder consultative networks and establish appropriate stakeholder consultative forums. 25

(2) For the purposes of subsection (1), the Chief Executive Officer must establish a stakeholder consultative forum which includes appropriate representation from, amongst others— 30

(a) the Department of Foreign Affairs;

(b) the Department of Home Affairs;

(c) the Department of Trade and Industry;

(d) the South African Revenue Service; and

(e) the Department of Environmental Affairs and Tourism. 35

(3) The Chief Executive Officer must report to the Board on a quarterly basis or as the need arises on any consultation undertaken.

PART 8

Law enforcement

Road Transport Inspectorate 40

37. (1) The Board must appoint the national Road Transport Inspectorate, consisting of the national road transport inspectors.

(2) The Road Transport Inspectorate must exercise its duties and powers under the control of the Board and subject to its prescriptions and instructions.

(3) The Minister may enter into an arrangement with any other Minister in terms of which officials in the department of the latter Minister may perform certain duties or functions on behalf of the Road Transport Inspectorate. 45

Powers of national road transport inspector

38. (1) A road transport inspector may—

(a) cause a vehicle to stop in the manner prescribed; 50

(b) question the driver or a passenger of the vehicle which was stopped under subsection (1) in the prescribed manner;

- (c) direct the driver or a passenger of the vehicle which was stopped under subsection (1) to produce any prescribed document in the prescribed manner;
- (d) confiscate a permit which has been specified in a written order issued by the Regulatory Committee;
- (e) confiscate a permit which authorises cross-border road transport if the vehicle is so defective as to be a possible danger to persons or property and must hand over the permit to the Chief Executive Officer; 5
- (f) request the driver or a person in charge of a vehicle to open the vehicle to enable him or her to examine the contents of the vehicle;
- (g) if the driver or person in charge of the vehicle fails or refuses to comply with a request made in terms of paragraph (f), open the vehicle and examine the contents of the vehicle and may for that purpose break any seal or locking device; 10
- (h) impound a vehicle which is reasonably suspected of being or having been used for cross-border road transportation contrary to the Act or an agreement; 15
- (i) impound goods which are reasonably suspected to have been conveyed contrary to the Act or an agreement;
- (j) direct the driver of a vehicle referred to in paragraphs (h) and (i) to deliver the vehicle and the goods to the nearest police station;
- (k) enter any premises to investigate any reasonably suspected contravention of the Act or an agreement, as contemplated in section 2(1), and whilst on the premises, he or she may— 20
 - (i) question any person who is reasonably believed to possess information which might lead to the conclusion of investigations;
 - (ii) request delivery of and examine any document which is reasonably believed to relate to the commission of an offence; 25
 - (iii) seize or make copies of any document referred to in paragraph (ii); or
 - (iv) question any person in relation to a document referred to in paragraph (ii).
- (2) A road transport inspector must— 30
 - (a) issue a notice, as prescribed, if any documentation has been confiscated under subsection (1);
 - (b) after opening a vehicle and examining the contents as provided for in subsection (1)(g) indicate in a prescribed certificate that the vehicle has been opened and that the contents have been examined in terms of subsection (1)(g); and 35
 - (c) deliver the goods or the vehicle which has been impounded to a police officer.
- (3) The powers conferred under subsection (1)(k) do not authorise a road transport inspector to enter private dwelling premises unless the owner of the premises consents to the entry or unless a court order authorising such entry has been obtained. 40
- (4) A person questioned or required to furnish information under subsection (1)(k) is entitled to the privileges to which a person testifying in a court of law would be entitled to.
- (5) A vehicle which is impounded in terms of subsection (1)(h) and goods which have been impounded in terms of subsection (1)(i) must be dealt with in accordance with the provisions of the Criminal Procedure Act, 1977, and the provisions of the Constitution. 45

Functions of road transport inspectors

- 39.** (1) The road transport inspectors must—
 - (a) enforce the provisions of this Act;
 - (b) enforce the provisions of any other legislation that confers certain rights and duties upon them; and 50
 - (c) support the Board and the Regulatory Committee in the performance of their functions.

(2) The Road Transport Inspectorate must from time to time, as determined by the Regulatory Committee and in the prescribed format, submit to the Regulatory Committee a report which contains—

- (a) law enforcement information on a route basis;
- (b) general information on traffic flows and tendencies; or 5
- (c) any other such matters as may be prescribed.

Offences and penalties

40. (1) A person who—
- (a) undertakes cross-border road transport without the required permit;
 - (b) undertakes or allows cross-border road transport to be undertaken contrary to the conditions or requirements of a permit; 10
 - (c) undertakes cabotage without the required permit;
 - (d) undertakes cabotage contrary to the provisions of a permit;
 - (e) being a permit-holder or the agent or employee of a permit-holder, enables a person who does not hold a permit, to use the permit-holder's permit; 15
 - (f) applies for or obtains a permit knowing that another permit has already been issued to another person or another legal person in relation to the same vehicle;
 - (g) with the intent to deceive, forges, alters, defaces, mutilates or adds to a permit;
 - (h) gives false information when required to supply information in terms of this Act; 20
 - (i) knowing that any writing is not a permit or document issued under this Act, utters or uses such writing or other document for the purposes of this Act;
 - (j) knowing that any permit or other document issued under this Act has been altered, defaced, mutilated or added to, uses it for the purposes of this Act; 25
 - (k) pretends that he or she is a road transport inspector;
 - (l) wilfully obstructs or hinders a road transport inspector in the execution of his or her duties;
 - (m) fails to comply with a direction or demand made by a road transport inspector;
 - (n) being a permit-holder or a driver of a vehicle, does not adhere to any prescribed obligation; 30
 - (o) being a permit-holder fails to comply with any permit condition;
 - (p) being a permit-holder fails to comply with any of the duties of a permit-holder as set out in this Act;
 - (q) being the driver or the permit-holder fails to ensure that a permit which relates to a particular vehicle is kept in such vehicle; 35
 - (r) being the driver fails to carry a consignment note or passenger list, as the case may be, at all times in a readily accessible place on the vehicle concerned;
 - (s) being a permit-holder fails, within 30 days after the expiry of a permit or after the number of journeys on the permit has been completed, to submit the permit and consignment note or passenger list, as the case may be, to the Regulatory Committee; 40
 - (t) with the intent to deceive, prepares any document for use in connection with cross-border road transport containing an incorrect description, knowing that description to be incorrect; 45
 - (u) fails to apply for a duplicate permit in the case of a damaged or illegible permit;
 - (v) fails to affix or keep affixed a distinguishing mark on any vehicle as prescribed;
 - (w) fails within 30 days of any material change in regard to the information contained in the application form to notify the Regulatory Committee; 50
 - (x) fails, within seven days of receipt of the notice by the Regulatory Committee, to submit the permit by registered post or by hand to the Regulatory Committee;

- (y) is the registered owner of a vehicle and allows cross-border road transport without a permit;
 - (z) fails to comply with the provisions of sections 25(9) and 30(6);
 - (zA) contravenes or fails to comply with any provision of this Act, if such contravention or failure is not elsewhere declared an offence, 5
- is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Forfeiture

41. (1) The court convicting any person of an offence under this Act involving the undertaking of unauthorised road transport may declare the vehicle used and any freight conveyed on it without authority, or the convicted person's rights in such vehicle or freight, to be forfeited to the State: Provided that such declaration does not affect any rights which any person other than the convicted person may have to the vehicle or freight in question, if it is proved that such other person— 10
- (a) could not reasonably be expected to have known or had no reason to suspect that the said vehicle was being or would be used for unauthorised road transport or that he or she could not prevent such use; or 15
 - (b) where the person knowing that the person intended to use the vehicle for unauthorised transport could not have reasonably prevented such use.
- (2) Section 35(4) of the Criminal Procedure Act, 1977, applies with reference to any forfeiture under subsection (1). 20

Evidential matters

42. (1) Any document which purports to be a permit issued under this Act, or a copy of such a permit certified as a true copy by a person who purports to be an officer of the Regulatory Committee or an officer of the competent authority of any other state with which an agreement referred to in section 2(1) has been concluded, which issued the original permit, is on its production by any person in any prosecution under this Act, admissible in evidence and is adequate proof that it is such a permit which has been validly issued under this Act, or that it is a true copy of such a permit, as the case may be, and that every statement contained in it is correct, unless the contrary is proved. 25 30
- (2) Any document which states that a vehicle described in it is, under the relevant South African law relating to the registration of vehicles or the similar law of a state with which the Republic has concluded an agreement in terms of section 2(1), registered in the name of a person named in it, and which purports to have been issued by the authority charged with the registration of vehicles under the said law at the place where such vehicle is registered under it, is on its production by any person in any prosecution under this Act, admissible in evidence and is adequate proof of the correctness of the statements contained in it, unless the contrary is proved. 35
- (3) Whenever in any proceedings the question arises whether a permit has been issued or a vehicle been registered under the law of any state with whom an agreement referred to in section 2(1) has been concluded thereunder, a document, purporting to be an affidavit made by a person who in that affidavit alleges that he or she is a person upon whom the law in question confers the power to or imposes the duty to issue permits or register vehicles and that he or she has issued the permit or registered the vehicle or that he or she has satisfied himself or herself that the permit has been issued or that the vehicle has been registered under that law, is *prima facie* proof that such permit has been issued or that such vehicle has been registered. 40 45

Jurisdiction

43. A magistrate's court has jurisdiction to try any case with regard to an offence as contemplated in this Act and to impose any penalty in connection therewith.

Limitation of liability

44. (1) Any person in the employ of the Board, as contemplated in section 14, is not personally liable for any damage caused by reason of any act done or omitted to be done in good faith by that person. 5

(2) The permit-holder or any employee of such permit-holder who is in charge of the vehicle to which such permit relates, is not liable by reason of any act done in good faith by such permit-holder or employee in accordance with any condition or requirement contained in that permit, relating to the transport of passengers in such a vehicle or any portion of it. 10

Points demerit system

45. (1) The Minister in consultation with the Board may, subject to the provisions of subsection (2), devise a points demerit system, based on contraventions of this Act, as well as contraventions contemplated in the Road Traffic Act, 1989, and may devise penalties, as may be prescribed. 15

(2) The Minister must publish his or her intention of devising a points demerit system in the *Gazette* and allow three months for comment on the proposals.

Co-operation between Board and cross-border road transport industry 20

46. The Board may, on the prescribed guidelines, make recommendations to the Minister aimed at incrementally introducing appropriate levels of self-regulation for the cross-border road transport industry.

PART 9

Duties of permit-holder 25

General duties

47. (1) The permit-holder must within 30 days of any change in relevant information notify the Chief Executive Officer thereof.

(2) The permit-holder must within 30 days of the lapsing of a registration certificate of a mechanically propelled vehicle, furnish the Regulatory Committee with a new registration certificate or a certified copy thereof. 30

(3) A permit-holder must at all times ensure that any vehicle being used for the transport of goods or passengers—

(a) is a fit, proper and suitable vehicle in regard to the route, the goods or passengers concerned, and the circumstances in which the transport is undertaken; 35

(b) is in a fit, proper and roadworthy condition in terms of the requirements of the road traffic legislation of the Republic and the state or states, as the case may be, that the vehicle will enter in terms of the provisions of the permit;

(c) is used with appropriate safety limits, precautions and requirements regarding the route, circumstances, commodity or persons being conveyed, the vehicle or the immediate public interest; 40

(d) does not exceed the permissible overall length as determined by the road traffic legislation of the Republic and the state or states, as the case may be, that the vehicle will enter in terms of the provisions of the permit; 45

(e) does not exceed the permissible authorised gross vehicle mass or other vehicle dimensions as determined by the road traffic legislation of the Republic and the state or states, as the case may be, that the vehicle will enter in terms of the provisions of the permit; and

(f) is not dangerous or unsafe or is not operated in a manner that is dangerous or unsafe.

(4) In order to comply with the requirements of this section, the permit-holder must maintain adequate and appropriate resources, drivers, personnel and facilities for the control, administration, maintenance, operation and storage of all vehicles recorded on the permit. 5

(5) The permit-holder must ensure that a driver of any vehicle being used for the transport of goods or passengers at all times—

(a) keeps a permit and, in the case of the transport of goods the consignment note, and in the case of the transport of passengers a passenger list, in a readily accessible place on the vehicle, to be produced upon request by a road transport inspector; 10

(b) holds a valid driver's licence in terms of the road traffic legislation of the Republic and the state or states, as the case may be, that the vehicle will enter in terms of the provisions of the permit in respect of the vehicle he or she is driving; 15

(c) holds a valid public or professional driving permit in accordance with the provisions of the road traffic legislation of the Republic and the state or states, as the case may be, that the vehicle will enter in terms of the provisions of the permit; and 20

(d) complies with the provisions of any road traffic legislation of the Republic and with the provisions of the Criminal Procedure Act, 1977, in respect of a summons or notice to appear in court for an offence committed within the course and scope of the employment of the driver with the permit-holder.

Discontinuation of cross-border passenger road transport 25

48. (1) A permit-holder cannot discontinue the transport of passengers unless 30 days' written notice has been given to the Chief Executive Officer delivered by hand or by registered post: Provided that the Chief Executive Officer may authorise the permit-holder to discontinue the transport of passengers within a shorter period.

(2) A permit-holder must within 10 days of a notice in terms of subsection (1) return the permit to the Chief Executive Officer by delivering it by hand or by registered post. 30

(3) If a permit-holder suspends the service of passenger transport for longer than 14 days, he or she must within 48 hours of such suspension or the resumption of the service inform the Chief Executive Officer in writing by delivering such notice by hand or by registered post. 35

Return of consignment notes and passenger lists

49. (1) The permit-holder with a permit authorising an unlimited number of journeys must return by hand or registered post to the Chief Executive Officer, in the case of transport of goods the completed consignment notes and in the case of the transport of passengers the completed passenger lists, not later than 21 days after the end of each calendar month. 40

(2) The permit-holder with a permit authorising a specified number of journeys must return by hand or registered post to the Chief Executive Officer, in the case of transport of goods the consignment notes, and in the case of the transport of passengers the passenger lists 21 days after the expiry of the permit. 45

(3) If a permit-holder, referred to in subsection (1) did not transport goods or passengers, as the case may be, during any calendar month under authority of such permit, that permit-holder must not later than 21 days after the end of the calendar month, notify the Chief Executive Officer accordingly.

PART 10*Procedural matters***Minute keeping by Board and Regulatory Committee**

50. (1) The Chairperson of the Board and the Regulatory Committee must cause minutes to be kept of each meeting of the Board and the Regulatory Committee respectively and must cause copies of such minutes to be circulated to all members of the Board or members of such Committee as the case may be. 5

(2) The minutes prepared in terms of subsection (1), when signed at a subsequent meeting of the Board or the Regulatory Committee by the person presiding thereat must, in the absence of proof or error therein, be deemed to be a true and correct record of the proceedings which they purport to minute and must, at any proceedings in terms of this Act or before a court of law or any tribunal or commission of inquiry, constitute *prima facie* evidence of the proceedings of the Board or the Regulatory Committee. 10

Regulations

51. The Minister, after consulting the Board, may make regulations, not inconsistent with this Act, relating to— 15

- (a) the fee structure for permits and other fees;
- (b) the consignment notes and passenger lists; and
- (c) anything that must or may be prescribed in terms of this Act.

Transitional provisions 20

52. (1) Subject to subsection (2), any permit authorising cross-border road transport which has been issued in terms of the Road Transportation Act, 1977 (Act No. 74 of 1977), or the Transport Deregulation Act, 1988 (Act No. 80 of 1988), must remain in force until such date as it lapses, or the number of journeys allocated under such permit has been used. 25

(2) All permits authorising cross-border road transport issued by the National Transport Commission in terms of the Road Transportation Act, 1977, and with a validity period exceeding 12 months will lapse within six months after the entry into force of this Act: Provided that the holder of such a permit may reapply to the Regulatory Committee for the granting of a permit in terms of this Act. 30

(3) Any prosecution of an offence committed under the Road Transportation Act, 1977, which had commenced prior to the entry into force of this Act, or any appeal, application or proceedings in or in respect of such a prosecution, must be continued and concluded as if the provisions of the Road Transportation Act, 1977, had at all relevant times been in operation. 35

(4) (a) No provision of this Act affects proceedings pending in a court of law at the commencement of this Act, and such proceedings may be continued and concluded in all respects as if this Act had not been passed.

(b) Proceedings are for the purposes of this section deemed to be pending at the commencement of this Act— 40

- (i) in the case of civil proceedings, if a summons has been issued, but judgment has not been given;
- (ii) in the case of criminal proceedings, if the accused has pleaded but judgment has not been given and sentence has not been imposed.

(5) No provision of this Act affects the previous operation of any law which has been repealed, or anything duly done or suffered under any law so made applicable or repealed. 45

(6) No provision of this Act affects any right, privilege, obligation or liability acquired, accrued or incurred under any law so made applicable or repealed.

(7) Any provision contained in any other law pertaining to cross-border transport, that is inconsistent with the provisions of this Act, is deemed to have been amended to the extent of the inconsistency thereof. 50

Repeal of legislation, and savings

53. (1) The Road Transportation Act, 1977, is hereby repealed in so far as it is applied in respect of cross-border transport.

(2) The Transport Deregulation Act, 1988, with the exception of section 6 is hereby repealed: Provided that any Schedule to that Act continues to be in force as a Schedule of this Act as if it were an agreement entered into under section 2(1). 5

(3) Any unrepealed provisions of the Transport (Co-ordination) Act, 1948 (Act No. 44 of 1948), are hereby repealed.

Short title and commencement

54. (1) This Act is called the Cross-Border Road Transport Act, 1998, and comes into operation, subject to subsection (2), on a date fixed by the President by proclamation in the *Gazette*. 10

(2) Different parts or sections of this Act may be brought into effect on different dates.

SCHEDULE 1

Determination by lot for purposes of section 7(2)(c):

1. Upon having appointed the not more than eight other members in terms of section 5(2)(c) of this Act, the Minister must forthwith proceed, in an open and transparent manner, to determine by lot, as required by section 7(2)(c), which four of such eight members must vacate their offices upon the expiry of 18 months after their appointment, for which purpose the Minister must be the person designated to conduct the lot.
2. The Minister must thereupon ensure that the name of each one of the eight members is written on a separate piece of paper of equal size and identical shape and colour.
3. The Minister must thereafter display the eight pieces of paper contemplated in paragraph 2, to every person who is present at the place where the lot is being conducted and who is desirous of inspecting any such piece of paper. The Minister must thereafter fold each such piece of paper in such a manner that the name thereon is not visible, and place all such pieces in an empty container.
4. The Minister must thereupon appoint an impartial person to draw four pieces of paper from the said container.
5. The designated person must thereafter shake the container in such a manner as to thoroughly mix the pieces of paper therein, and must hold such container in such a position that the drawer is unable to see the pieces of paper inside.
6. The drawer must thereafter draw four pieces of paper from such container and hand them to the Minister without unfolding any of them.
7. The Minister must then unfold each of the four pieces of paper handed to him or her as contemplated in paragraph 6, read out the names written thereon and display every such piece of paper to every person who is present at the place where the lot is being conducted and who is desirous of inspecting the same.
8. The four persons whose names have been so drawn must vacate their offices as members 18 months after the date of their appointment as such.

EXPLANATORY MEMORANDUM ON THE OBJECTS OF THE CROSS-BORDER ROAD TRANSPORT BILL, 1998

The Department of Transport (“the Department”) is responsible for, amongst others, cross-border road transport policy development and implementation. The Bill provides the legislative framework within which the Department will execute its function in respect of cross-border road transport. To this end, the Bill consolidates the regulatory position in respect of cross-border freight and passenger road transport; provides a policy framework in respect of cross-border road transport; and provides the institutional structure for the regulation and management of cross-border road transport.

Cross-border road freight and passenger transport are currently regulated in terms of various bilateral and multilateral road transport agreements concluded in terms of section 6 of the Transport Deregulation Act, 1989 (Act No. 80 of 1989). Where no such agreements exist, the Road Transportation Act, 1977 (Act No. 74 of 1977), regulates both cross-border freight and passenger road transport. The Bill phases out legislative fragmentation and provides a consolidated legislative position in respect of cross-border road transport.

The Bill provides the policy building blocks in support of, *inter alia*, market-access liberalisation in respect of cross-border freight transport, regulated competition in respect of cross-border passenger transport and the empowerment of the cross-border road transport industry as a whole to maximise business opportunities and to regulate themselves incrementally to improve safety, security, reliability, quality and efficiency of services.

In order to achieve the abovementioned, the Bill provides for the establishment of a body known as the Cross-Border Road Transport Agency (“the Agency”), which will **advise** the Minister of Transport (“the Minister”) on cross-border road transport matters and assist in negotiating and renegotiating international road transport agreements; **regulate** the road transport industry’s access to markets; **facilitate** ongoing cooperative and consultative relationships and structures between the public and private sectors in support of cross-border road transport operations; and undertake **law enforcement**.

The Minister will retain his or her policy-making function. However, the Department will no longer be the sole supporting mechanism to assist in implementing the policy, but the Agency will also provide such support to the Minister.

The Agency will be managed by a Board, appointed by the Minister, and will be made up of road users, business and other professional interests. The day-to-day running of the Agency will be overseen by a Chief Executive Officer (“the CEO”), appointed by the Board. In the execution of the advisory, regulatory, facilitatory and law enforcement functions of the Agency, the CEO will be assisted by the Agency staff and road transport inspectors.

The Regulatory Committee, comprising the Chairperson and Deputy Chairperson of the Board and four other members, will hear all applications for cross-border permits. It may, however, delegate this function in certain instances to the CEO. Any person with an interest in the outcome of the hearing may appeal, in writing, to the Transport Appeal Tribunal, which is an independent body established in terms of section 2 of the Transport Appeal Tribunal Act, 1998.

The Department will not directly be represented on the Board. However, the Minister may nominate representatives to participate in any meeting of the Board or the Regulatory Committee in a non-voting capacity.

Although the Agency will be independent, it will be held accountable to both its immediate clients and through the Minister to Parliament. Government is thus removed from direct involvement, but is still given sufficient control.

The Agency will be run along commercial lines and be financially accountable. The operational costs will be financed from fees levied on the granting of cross-border road transport permits, monies collected from the imposition of fines in terms of the Bill,

monies appropriated by Parliament for this purpose and donations. It is, however, foreseen that the Agency will become self-sufficient within a period of two years.

The Bill was first published for general notice and comment in the *Gazette* on 22 December 1996. In addition, the undermentioned government departments, bodies and institutions have been consulted independently. The comments which were received have been taken note of and incorporated where possible.

List of the government departments, bodies and institutions consulted independently:

- * Afrikaanse Handelsinstituut (AHI)
- * Automobile Association (AA)
- * Coach Operators Associations of Southern Africa (COASA)
- * Cross-border taxi associations
- * Department of Agriculture
- * Department of Arts, Culture, Science & Technology
- * Department of Communications
- * Department of Constitutional Development
- * Department of Correctional Services
- * Department of Education
- * Department of Environmental Affairs & Tourism
- * Department of Finance
- * Department of Foreign Affairs
- * Department of Home Affairs
- * Department of Housing
- * Department of Labour
- * Department of Land Affairs
- * Department of Mineral & Energy Affairs
- * Department of Public Enterprises
- * Department of Public Works
- * Department of Sport & Recreation
- * Department of State Expenditure
- * Department of Trade & Industry
- * Department of Welfare
- * Development Bank of Southern Africa (DBSA)
- * Ministry of Communications & Transport, Zambia
- * Ministry of Public Works & Transport, Swaziland
- * Ministry of Transport & Communications, Lesotho
- * Ministry of Transport & Communications, Mozambique
- * Ministry of Transport & Energy, Zimbabwe
- * Ministry of Works, Transport & Communications, Botswana
- * Ministry of Works, Transport & Communications, Namibia
- * National Transport Commission (NTC)
- * National Transport Forum (NTF)
- * National African Federated Chamber of Commerce (NAFCOC)
- * Office of the Auditor-General
- * Provincial Government: Gauteng
- * Provincial Government: Eastern Cape
- * Provincial Government: Free State
- * Provincial Government: KwaZulu-Natal
- * Provincial Government: Mpumalanga
- * Provincial Government: North West
- * Provincial Government: Northern Cape
- * Provincial Government: Northern Province
- * Provincial Government: Western Cape
- * Public Service Commission
- * Registrar of Companies
- * Road Freight Association (RFA)
- * South African Association of Road Transport Consultants
- * South African Chamber of Business (SACOB)
- * South African Foreign Trade Organisation (SAFTO)
- * South African National Defence Force (SANDF)
- * South African Police Service (SAPS)
- * South African Road Federation
- * South African Revenue Services (SARS)

- * South African Tourism Organisation (SATO)
- * Southern African Association of Freight Forwarders (SAAFF)
- * Southern African Bus Operators Association (SABOA)
- * Southern African Tourism Services Association (SATSA)
- * Southern African Transport & Telecommunications Technical Unit (SATCC-TU)
- * TRANSNET
- * Transport & General Workers' Union (T&GWU)

The Department and the State Law Adviser are of the opinion that the procedure set out in section 75 of the Constitution should be followed with regard to this Bill, as it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.