

REPUBLIC OF SOUTH AFRICA

ROAD TRAFFIC MANAGEMENT CORPORATION BILL

(As introduced in the National Council of Provinces as a section 76 Bill)

(SELECT COMMITTEE ON PUBLIC SERVICES)

[B 6—99]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE PADVERKEERSBESTUURS- KORPORASIE

(Soos ingedien in die Nasionale Raad van Provinsies as 'n artikel-76-wetsontwerp)

(GEKOSE KOMITEE OOR OPENBARE DIENSTE)

[W 6—99]

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BILL

To provide, in the public interest, for co-operative and co-ordinated strategic planning, regulation, facilitation and law enforcement in respect of road traffic matters by the national, provincial and local spheres of government; to regulate the contracting out of road traffic services; to provide for the phasing in of private investment in road traffic; to that end, to provide for the establishment of the Road Traffic Management Corporation; and to provide for connected matters.

PREAMBLE

SINCE there is a need to enhance the overall quality of road traffic and, in particular, to promote safety, security, order, discipline and mobility on the roads, and to protect road infrastructure and the environment through the adoption of innovative road traffic practices and technology;

AND SINCE there is a need to define and strengthen co-operation and co-ordination between the national, provincial and local spheres of government in support of their respective road traffic strategic planning, regulation, facilitation and enforcement;

AND SINCE there is a need to regulate and maximize the constructive role of provincial authorities and local government bodies in support of enhanced road traffic service provision and in particular, road traffic law enforcement;

AND SINCE there is a commitment to engage the private sector and, in particular, the previously disadvantaged sectors, to take up business opportunities in the provision of road traffic services in order to, where appropriate, refocus and supplement public sector capacity;

AND SINCE there is a need to guide and sustain the transition, where appropriate, towards the phasing out of public funding and the concomitant expansion of private investment in road traffic;

AND SINCE public transport and road traffic regulation are of vital importance to the development, safety and quality of life of the citizens of the Republic and the region;

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

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**CHAPTER 1
DEFINITIONS AND OBJECTIVES** 25

Definitions

1. In this Act, unless the context otherwise indicates—
- (i) “board” means the board established in terms of section 8(1); (xvi)
 - (ii) “business group” means a service provider, including, but not limited to— 30
 - (a) a provincial authority;
 - (b) a local government body;
 - (c) a private sector entity;
 - (d) any entity established through a public and private sector partnership;
 - (e) the SAPS; and
 - (f) any statutory transport institution established in terms of national or provincial legislation and vested with road traffic powers; (xviii) 35
 - (iii) “business and financial plan” means the business and financial plan of the Corporation approved in terms of section 14(5); (xvii)
 - (iv) “financial year”, in relation to the Corporation, means the period determined in terms of section 14(1); (iii) 40
 - (v) “Corporation” means the Road Traffic Management Corporation established in terms of section 3; (vii)
 - (vi) “functional unit” means a functional unit of the Corporation established in terms of section 18(1); (iv)
 - (vii) “governance agreement” means the agreement concluded by the Shareholders Committee with the board in terms of section 9(1); (ii) 45
 - (viii) “innovative project” means a project which possesses at least one of the following attributes:
 - (a) a recognised process, design, methodology or engineering concept which has demonstrated its ability to significantly reduce construction costs, accelerate project execution, improve safety, enhance project performance, extend economic life, reduce costs of facility maintenance and operations or reduce negative environmental impacts or social or economic disturbances or disruptions during either the project implementation or construction phase or the operation phase; 50
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- (b) a process for which the project proponent or a member of the proponent joint equity venture or consortium possesses exclusive rights, either worldwide or regionally;
- (c) a design, methodology or engineering concept for which the proponent or a member of the proponent joint equity venture or consortium possesses intellectual property rights; or 5
- (d) clustering services in the transport and other sectors with the potential to enhance the efficiency and affordability of transportation; (vi)
- (ix) “joint equity venture contract” means a contractual arrangement between the Corporation and a private person or entity for the purpose of undertaking a new commercial activity in respect of which the Corporation is a shareholder or provides a portion of the equity or investment capital; (v) 10
- (x) “MEC” means the Member or Members of the Executive Committee of a province who is responsible for matters connected with road traffic in that province; (viii) 15
- (xi) “Minister” means the Minister of Transport; (ix)
- (xii) “National Commissioner” means the National Commissioner referred to in section 6(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995); (x)
- (xiii) “negative concession” means a contract to provide a road traffic service which is essential to the public but cannot be provided at a profit and requires public financing; (xi) 20
- (xiv) “prescribed” means prescribed by regulation in terms of section 48(1); (xxx)
- (xv) “public service obligation” means a social obligation of the State to provide a non-profitable road traffic service; (xiii) 25
- (xvi) “ring-fencing”, in relation to functional units, means containing each functional unit and keeping separate accounting records for each one in order to ascertain each functional unit’s profitability and discourage cross-subsidisation; (xii)
- (xvii) “road traffic law enforcement officer” is an authorised officer appointed in terms of section 3A of the National Road Traffic Act, 1996 (Act No. 93 of 1996), who meets the standards set in the national road traffic law enforcement code referred to in section 32(1) of this Act, and includes a member of a municipal police service may be established in terms of section 64A of the South African Police Service Act, 1995 (Act No. 68 of 1995); (xv) 30 35
- (xviii) “road traffic service” means a service that must be provided in terms of any law for the purpose of road traffic regulation; (xiv)
- (xix) “SAPS” means the South African Police Service established by section 5 of the South African Police Service Act, 1995; (xix) and
- (xxx) “Shareholders Committee” means the Shareholders Committee established in terms of section 6(1). (i) 40

Objectives of Act

2. The objectives of this Act are, in the public interest—
- (a) to enhance the overall quality of road traffic service provision and, in particular, to ensure safety, security, order, discipline and mobility on the roads; 45
 - (b) to protect road infrastructure and the environment through the adoption of innovative practices and implementation of innovative technology;
 - (c) to phase out, where appropriate, public funding and phase in private sector investment in road traffic on a competitive basis; 50
 - (d) to introduce commercial management principles to inform and guide road traffic governance and decision-making in the interest of enhanced service provision;
 - (e) to optimise the utilisation of public funds by—
 - (i) limiting investment of public funds to road traffic services which meet a social or non-commercial strategic objective and which have poor potential to generate a reasonable rate of return; and 55

- (ii) securing, where appropriate, full cost recovery on the basis of the user-pays principle;
- (f) to regulate, strengthen and monitor intergovernmental contact and co-operation in road traffic matters;
- (g) to improve the exchange and dissemination of information on road traffic matters; 5
- (h) to stimulate research in road traffic matters and effectively utilise the resources of existing institutes and research bodies;
- (i) to develop human resources in the public and private sectors that are involved in road traffic; and 10
- (j) to establish the Road Traffic Management Corporation as a partnership between national, provincial and local spheres of government by—
 - (i) effecting the pooling of road traffic powers of the Minister and every MEC and the resources of national and provincial spheres of government responsible for road traffic management, in support of enhanced co-operative and co-ordinated road traffic strategic planning, regulation, facilitation and law enforcement; 15
 - (ii) strengthening national and provincial governments' collective capacity to govern road traffic through partnerships with local government bodies and the private sector; and 20
 - (iii) focussing government on effective strategic planning, regulation, facilitation and monitoring.

CHAPTER 2 ESTABLISHMENT AND GOVERNANCE OF ROAD TRAFFIC MANAGEMENT CORPORATION

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Establishment of Corporation

3. A juristic person called the Road Traffic Management Corporation is hereby established.

Independence of Corporation

4. The Corporation must perform its functions in an independent and impartial manner without undue influence from any person. 30

Composition of Corporation

5. The Corporation consists of—
- (a) a Shareholders Committee;
 - (b) a chief executive officer; 35
 - (c) a board, subject to a decision of the Shareholders Committee to establish a board in terms of section 8;
 - (d) managers of functional units appointed in terms of section 19(1); and
 - (e) such professional, technical, administrative and support staff, appointed in terms of section 20(1), as may be required for the proper performance of its functions. 40

Establishment and composition of Shareholders Committee

6. (1) A Shareholders Committee is hereby established.
- (2) The Shareholders Committee consists of— 45
- (a) the Minister;
 - (b) every MEC; and
 - (c) a representative nominated by the national organisation recognised in terms of section 2(a) of the Organised Local Government Act, 1997 (Act No. 52 of 1997).
- (3) Each member of the Shareholders Committee has, subject to subsection (4), one vote. 50
- (4) If a province has more than one MEC as member of the Shareholders Committee the vote may only be exercised by the MEC of that province whose portfolio is most closely connected to the function in respect of which a decision needs to be taken.
- (5) The chief executive officer must attend the meetings of the Shareholders Committee and may take part in deliberations but has no vote. 55

Role of Shareholders Committee

7. (1) The Shareholders Committee is a forum through which the national, provincial and local spheres of government co-operate with each other and with other persons or bodies concerned with road traffic matters.

(2) The Shareholders Committee is responsible for directing and guiding the proper functioning of the Corporation in the public interest and for reflecting, in its decision-making procedures, the spirit of co-operation and mutual trust contemplated in section 41(1)(h) of the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996). 5

Appointment of and delegation to board 10

8. (1) The Shareholders Committee may, subject to subsection (2), establish a board for the Corporation consisting of the chief executive officer and a maximum of eight persons appointed by that Committee.

(2) The appointed members of the board must be persons from the public and private sectors with proven expertise and competency in the field of corporate management, commerce, commercial banking, financing and road traffic affairs. 15

(3) The Shareholders Committee must, before appointing a board, come to a decision as to—

- (a) the powers which may be delegated to the board after its appointment; and
- (b) the conditions it thinks fit to impose in respect of the exercise of delegated powers. 20

(4) The Shareholders Committee may, in writing, delegate to the board any of the powers contemplated in subsection (3)(a).

(5) The Shareholders Committee may continue to issue directives in terms of section 13 with regard to powers delegated to the board. 25

(6) The board must exercise the powers delegated in terms of subsection (4) subject to the conditions, if any, contemplated in subsection (3)(b).

(7) The Shareholders Committee may, at any time, withdraw a delegation effected in terms of this section.

(8) Any delegation in terms of subsection (4) does not prohibit the Shareholders Committee from exercising the delegated power. 30

(9) In determining the composition of the board as contemplated in subsection (2), the Shareholders Committee must take into account the nature of the powers that may be delegated to the board.

(10) The Shareholders Committee may only appoint members of the board after— 35

- (a) the Shareholders Committee has, by notice in the *Gazette*, every *Provincial Gazette* and a Sunday newspaper, called for nominations for members of the board;
- (b) the Shareholders Committee has submitted a list of suitable candidates to the committees of Parliament responsible for road traffic matters; 40
- (c) the committees of Parliament responsible for road traffic matters has submitted a short-list of candidates to the Shareholders Committee; and
- (d) the Shareholders Committee has, by notice in the *Gazette*, every *Provincial Gazette* and a Sunday newspaper, published the short-list referred to in paragraph (c) and called for public comment or objections to be submitted by 45 not later than a date specified in such notice.

(11) The Shareholders Committee must, within one month after the appointment of the members of the board, publish a list of the members by notice in the *Gazette*, every *Provincial Gazette* and a Sunday newspaper.

(12) The members of the board hold office on the terms and conditions, including remuneration and allowances, as may be prescribed after consultation with the Minister of Finance. 50

(13) The Shareholders Committee must designate one of the members of the board as the chairperson until the board has met and is able to elect its presiding officers.

(14) The first meeting of the board must be held at the place and time specified by the Shareholders Committee. 55

(15) The board must determine the procedure in respect of its meetings and decisions.

Governance agreement with board

9. (1) The Shareholders Committee must, after consultation with the Minister of Finance and every MEC responsible for finance, enter into a written governance agreement with the board relating to—
- (a) the expectations of national, provincial and local governments in respect of the Corporation's scope of business, efficiency, financial performance and achievement of objectives; 5
 - (b) the principles which the Corporation must apply for the purpose of business planning which includes the commitment to phase in private investment in road traffic and, where appropriate, contract out road traffic service provision to provincial authorities and local government bodies, the SAPS, any other statutory transport institution vested with the powers to execute road traffic functions and the private sector; 10
 - (c) the measures that are necessary to protect the financial soundness of the Corporation, including— 15
 - (i) the ring-fencing of functional units; and
 - (ii) subject to section 34, the provision of business opportunities to the private sector;
 - (d) the procedures which the Corporation must follow in the awarding of tenders and granting of concessions; 20
 - (e) key performance indicators in terms of which the Corporation's performance will be evaluated;
 - (f) the structure of the business and financial plan;
 - (g) the level and scope of monitoring of the Corporation's performance by the chief executive officer; and 25
 - (h) any other matter relating to the performance of the Corporation's functions in terms of this Act.
- (2) The Shareholders Committee and the board may, in terms of subsection (1), in writing amend the governance agreement from time to time.
- (3) The Shareholders Committee and the board must, before entering into the governance agreement or an amendment thereof, on any matter which may adversely affect them, consult with— 30
- (a) parties who have an interest in road traffic regulation, including, but not limited to, educational organisations and health organisations; and
 - (b) persons to whom tenders or concessions contemplated in subsection (1)(d) have been awarded. 35
- (4) The Shareholders Committee must publish the governance agreement in the *Gazette* and every *Provincial Gazette* within 30 days from the date on which that governance agreement was entered into, and any amendment thereto must be so published within 30 days of that amendment coming into operation. 40
- (5) Any member of the public may inspect a copy of the governance agreement at the head office of the Corporation during business hours.
- (6) Failure by the board to comply with any provision of the governance agreement does not affect the validity or enforceability of any agreement, right, obligation or liability entered into, acquired or incurred by the Corporation. 45

Conditions and period of office of board members

10. (1) An appointed member of the board vacates his or her office immediately if he or she—
- (a) has been or is convicted— 50
 - (i) whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged statement, perjury or any offence involving dishonesty; or
 - (ii) of any offence in terms of the Corruption Act, 1992 (Act No. 94 of 1992), the Companies Act, 1973 (Act No. 61 of 1973), or this Act;
 - (b) without authorisation, has disclosed or discloses, or improperly has acted or acts on, information gained as a result of his or her membership of the board; 55
 - (c) is or becomes a political office bearer;

- (d) is or becomes an unrehabilitated insolvent or has committed or commits an act of insolvency;
 - (e) has been or is removed from an office of trust on account of misconduct; or
 - (f) has been or is relieved of his or her office in terms of subsection (3) or (4).
- (2) If a member of the board, or his or her spouse, immediate family member, life partner or business associate has any direct or indirect financial interest in any matter to be dealt with at any meeting of the board, that member—
- (a) must immediately after that interest has come to his or her attention, disclose that interest and the extent thereof in a written statement to the chairperson of the board, who must table that statement at the beginning of the next meeting of the board;
 - (b) may not attend the portion of a meeting of the board during which the matter is considered;
 - (c) may not in any manner take part in the consideration of that matter by the board; and
 - (d) may not in any manner endeavour to influence the opinion or vote of any other member of the board in connection with that matter.
- (3) The Shareholders Committee must immediately relieve any appointed member of his or her office if that member has—
- (a) failed to comply with subsection (2);
 - (b) failed to attend three consecutive meetings of the board without prior leave of the chairperson as noted in the minutes of those meetings;
 - (c) been unable to perform his or her functions of office effectively due to continued serious ill-health; or
 - (d) been declared by a competent court to be of unsound mind.
- (4) The Shareholders Committee may, on the same date and conditions, relieve all the appointed members of the board of their offices if—
- (a) they have failed to substantially comply with the governance agreement and the business and financial plan; and
 - (b) the Shareholders Committee has—
 - (i) in writing individually notified every appointed member of the board of the nature of such failure, and has, within seven days of the date of such notification, tabled a copy of the notification in Parliament or, if Parliament is not then in session, published a copy of the notification in the *Gazette*;
 - (ii) afforded the board a reasonable opportunity to make a written submission to it in respect of that notification; and
 - (iii) if such submission does not satisfactorily explain the failure specified in that notification, afforded the board a reasonable opportunity to rectify that failure but the board has failed to do so.
- (5) A member of the board holds office for a period not exceeding five years.
- (6) A member of the board may resign on one month's written notice to the Shareholders Committee.
- (7) The Shareholders Committee must fill vacancies on the board as soon as possible in accordance with section 8(10).

Meetings of Shareholders Committee

11. (1) The Minister is the chairperson of the Shareholders Committee.
- (2) The Minister must convene the Shareholders Committee at least four times a year at the place and time specified by the Minister.
- (3) The Shareholders Committee must appoint a MEC referred to in section 6(2)(b) as deputy chairperson for a period not exceeding 12 months.
- (4) The Minister or, in his or her absence, the deputy chairperson, if he or she is present, presides at every meeting of the Shareholders Committee.
- (5) If both the Minister and the deputy chairperson of the Shareholders Committee are unable to perform any function of the chairperson, the other members must designate one of their number to act as chairperson during such inability.

(6) The Shareholders Committee must determine the procedure in respect of its meetings.

(7) A quorum for a meeting of the Shareholders Committee is half of the appointed members plus one.

(8) The Shareholders Committee must endeavour to reach consensus on any matter considered by it, but in the event that it cannot reach consensus, the decision of the majority of the members present at the meeting in question will, subject to section 12, prevail. 5

(9) In the event of an equality of votes, the member chairing the meeting has a casting vote in addition to his or her deliberative vote and he or she must exercise such vote to break a deadlock. 10

(10) No decision of the Shareholders Committee is invalid by reason only of the fact that when the decision was taken a vacancy existed on the Shareholders Committee.

(11) A person appointed, or official seconded in terms of section 17, must compile minutes of the meetings of the Shareholders Committee and make them available to the members of the Shareholders Committee. 15

Shareholders Committee's decisions that require special majority

12. Any decision—

- (a) to change policy or adopt a new policy in terms of section 28(1)(b)(iii);
- (b) to recommend legislation, including amendments to this Act or any other legislation, concerning road traffic matters; 20
- (c) to deviate from, or amend, the business and financial plan for the Corporation;
- (d) to approve the annual report as contemplated in section 22(1);
- (e) to establish a board and to appoint members of the board in terms of section 8(1); 25
- (f) to delegate powers to the board in terms of section 8(4);
- (g) to approve the national road traffic law enforcement code;
- (h) to award a contract for the provision of road traffic law enforcement services to provincial authorities and local government bodies, the SAPS and any other statutory transport institution vested with powers to execute road traffic law enforcement; 30
- (i) to discharge the chief executive officer;
- (j) to impose or adjust transaction fees as contemplated in section 24(1)(a); or
- (k) to combine or divide areas of registering authorities as contemplated in section 3 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), 35

requires a two-third majority in the Shareholders Committee.

Directives

13. (1) The Shareholders Committee or the board, as the case may be, may in writing issue a directive requiring the chief executive officer to do or not to do what is mentioned in the directive, if the Shareholders Committee or the board, as the case may be, considers it necessary. 40

(2) Any directive issued in terms of subsection (1) must be consistent with any law administered by the Corporation and must fall within the ambit of the business and financial plan.

(3) The chief executive officer must take all necessary steps to give effect to a directive issued in terms of subsection (1). 45

(4) The Shareholders Committee must submit a copy of a directive issued in terms of subsection (1) by it to—

- (a) the Minister who must table it in Parliament within 14 days of the issuing of that directive or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session; and 50
- (b) every MEC who must table it in the provincial legislature concerned within 14 days of the issuing of that directive or, if the legislature is not then in session, within 14 days after the commencement of its next ensuing session.

- (5) The board must submit a copy of a directive issued in terms of subsection (1) by it to the Shareholders Committee who, in turn, must submit it to—
- (a) the Minister who must table it in Parliament within 14 days of the issuing of that directive or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session; and 5
 - (b) every MEC who must table it in the provincial legislature concerned within 14 days of the issuing of that directive or, if the legislature is not then in session, within 14 days after the commencement of its next ensuing session.

Business and financial plan

14. (1) The financial year of the Corporation spans the period as determined by the Shareholders Committee. 10

(2) The chief executive officer is responsible for the preparation of the business and financial plan, and to this end, must initiate the preparation of a draft plan in respect of the ensuing three financial years at least six months before the commencement of the first of those three financial years of the Corporation. 15

(3) For the purpose of subsection (2), the managers of functional units must, in the format and within the period specified in a written instruction issued by the chief executive officer, provide draft inputs relating to the focus of their functional units to the draft business and financial plan.

(4) The chief executive officer must— 20

- (a) consolidate the inputs contemplated in subsection (3); and
- (b) submit the draft business and financial plan to the managers of functional units for comment.

(5) The chief executive officer must, after consideration of any comments received timeously from the managers of functional units, finalise the draft business and financial plan, and at least two months before the commencement of each financial year, submit the plan and any amendments thereto, to the Shareholders Committee for consideration and approval. 25

(6) The draft business and financial plan must specify—

- (a) the objectives of the Corporation for each of the ensuing three financial years; 30
- (b) the Corporation's scope of business, efficiency, financial performance and pricing of services;
- (c) the key performance indicators, targets and criteria for assessing the performance of the Corporation;
- (d) the principles, strategies, policies and budgets for achieving the objectives of the Corporation, which must include the commitment to contract out road traffic service provision to appropriate business groups and, where appropriate, phase in private investment in road traffic; 35
- (e) the measures that are necessary to protect the financial soundness of the Corporation, including— 40
 - (i) the ring-fencing of functional units; and
 - (ii) subject to section 34, the provision of business opportunities to the private sector; and
- (f) the thresholds at which the chief executive officer must obtain the approval of the Shareholders Committee in the awarding of tenders and granting of concessions. 45

(7) For the purpose of mobilising private sector investment or participation in road traffic as contemplated in section 34, the business and financial plan must, in respect of every road traffic-related asset or service, specify—

- (a) the nature of the investment or services to be procured; 50
- (b) the transfer actions contemplated in section 34 to be undertaken in respect of such a road traffic asset or service;
- (c) the order of priority in which the actions referred to in paragraph (b) are to be undertaken;
- (d) the appropriate contract to be utilised for the actions referred to in paragraph (b); 55

- (e) whether the road traffic asset or service can be operated at a reasonable rate of return or whether such asset or service can only be provided in terms of a negative concession;
 - (f) the nature and levels of essential public service obligations;
 - (g) the potential for unbundling road traffic services or bundling road traffic services with each other or with other transport or non-transport related services; and 5
 - (h) the period within which any actions in terms of paragraph (b) must be completed.
- (8) The Minister and each MEC serving on the Shareholders Committee must cause 10
copies of the approved business and financial plan to be tabled in Parliament and every provincial legislature, as the case may be, within 14 days of receipt of that plan or, if Parliament or the provincial legislature concerned is not then in session, within 14 days after commencement of its next ensuing session.
- (9) Failure by the Corporation to comply with any provision of the business and 15
financial plan does not affect the validity or enforceability of any agreement, right, obligation or liability entered into, acquired or incurred by the Corporation.

Appointment of chief executive officer

15. (1) The Shareholders Committee must, subject to subsection (3), appoint a chief 20
executive officer of the Corporation within one month after the date of commencement of this Act.
- (2) For the purpose of subsection (1), the Shareholders Committee must invite applications for the post of chief executive officer by publishing an advertisement in a Sunday newspaper circulating country-wide.
- (3) Any person appointed as chief executive officer of the Corporation must— 25
- (a) have at least five years managerial experience of which at least three years must have been gained in an executive capacity;
 - (b) be knowledgeable about road traffic affairs; and
 - (c) be a South African citizen, unless the Shareholders Committee determines 30
otherwise.
- (4) The appointment of the chief executive officer is subject to the conclusion of a performance contract between such officer and the Shareholders Committee.
- (5) A chief executive officer is appointed for a period of five years, on the completion of which the post must be advertised in the manner specified in subsection (2).
- (6) A chief executive officer is eligible for reappointment after the expiration of the 35
period of appointment referred to in subsection (5).
- (7) The chief executive officer holds office, subject to subsections (8) and (9), on the terms and conditions, including remuneration and allowances, as determined in writing by the Shareholders Committee, after consultation with the Minister of Finance.
- (8) The chief executive officer may not engage in any other paid employment and may 40
not participate in any activity in respect of which he or she is in any way remunerated or receives any benefits or allowances, without the prior written approval of the Shareholders Committee.
- (9) The chief executive officer or his or her spouse, immediate family member, life 45
partner or business associate, may not hold any direct or indirect financial interest in any road traffic activity or the road traffic industry—
- (a) without the prior approval of the Shareholders Committee; and
 - (b) unless the minutes of the meeting of the Shareholders Committee reflecting 50
such approval are open to inspection by the public at the head office of the Corporation during business hours.

Publication and reporting

16. (1) The Shareholders Committee must, as soon as is practicable after each meeting and by notice in the *Gazette*, every *Provincial Gazette* and a Sunday newspaper circulating country-wide, cause full particulars to be published of a policy decided on in 55
terms of section 28(1)(b)(iii).
- (2) The Shareholders Committee must present to Parliament and each provincial legislature, an annual written report as referred to in section 22(4) on its activities.

Secretariat

17. The Minister may appoint as many persons or, in accordance with section 15 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), second as many officials employed by the national Department of Transport, as he or she may reasonably determine to be necessary for administrative support and performance of the secretarial functions of the Shareholders Committee. 5

Establishment of functional units

18. (1) The Shareholders Committee must, as part of the organisational structuring of the Corporation, establish as many functional units as are required in accordance with the business and financial plan, to ensure effective management of, at least, the following functional areas: 10

- (a) road traffic law enforcement;
- (b) training of traffic personnel;
- (c) vehicle registration and licensing;
- (d) vehicle and roadworthiness testing; 15
- (e) testing and licensing of drivers;
- (f) road traffic information;
- (g) accident investigations and recording thereof;
- (h) communication and education;
- (i) infrastructure safety audits; and 20
- (j) administrative adjudication of road traffic offences.

(2) A functional unit may be structured to best give effect to country-wide functioning.

(3) A manager appointed in terms of section 19(1) is responsible for the day-to-day functioning of a functional unit, and must manage the unit— 25

- (a) on a commercial basis in accordance with the business and financial plan; and
- (b) independently from any other functional unit as a financially ring-fenced unit.

(4) The manager of a functional unit may, subject to the approval of the Shareholders Committee, conclude a contract with the manager of any other functional unit to provide services to that other unit for compensation. 30

Appointment of managers of functional units

19. (1) The chief executive officer must appoint a manager for each functional unit established in terms of section 18(1) within one month after the establishment of the functional unit.

(2) For the purpose of subsection (1), the chief executive officer must invite applications for the post of manager by publishing an advertisement in a Sunday newspaper. 35

(3) Any person appointed to the post of manager must—

- (a) be knowledgeable about road traffic management and operations;
- (b) have proven executive managerial experience; and 40
- (c) be a South African citizen.

(4) The appointment of a manager of a functional unit is subject to the conclusion of a performance contract, approved by the Shareholders Committee, between that manager and the chief executive officer.

(5) A manager is appointed for a period of five years, on completion of which the post must be advertised in the manner specified in subsection (2). 45

(6) A manager of a functional unit is eligible for reappointment after the expiration of the period of appointment referred to in subsection (5).

(7) A manager of a functional unit holds office on such terms and conditions, including remuneration and allowances, as approved by the Shareholders Committee after consultation with the Minister of Finance. 50

Staff of Corporation

20. (1) The chief executive officer may, on such conditions as the Shareholders Committee determines, appoint the employees that are necessary to enable the Corporation to properly carry out its functions. 55

(2) The Corporation pays its employees out of its funds such remuneration, allowances, subsidies and other benefits as determined by the Shareholders Committee on the advice of the chief executive officer and after consultation with the Minister of Finance.

(3) The Minister or a MEC may, after consultation with the Shareholders Committee, the Public Service Commission and the Head of the Department concerned, and with the written consent of an official in the employ of the national or provincial Department of Transport, make available the services of that official to the Corporation. 5

Business groups

21. The chief executive officer may, in accordance with the business and financial plan and subject to section 37 and Chapter 6, contractually appoint one or more business groups for each functional unit to provide road traffic services related to the functional areas concerned. 10

Annual report

22. (1) The chief executive officer must, within three months before the end of each financial year, submit to the Shareholders Committee for its approval an annual report pertaining to the financial state of affairs and business of the Corporation and its functional units as at the end of that financial year, consisting of— 15

- (a) a balance sheet, an income statement and a cash-flow statement which is a true and correct reflection of the state of affairs of the Corporation as at the end of that financial year; 20
- (b) a report on the Corporation in terms of subsection (2);
- (c) a report by the auditor of the Corporation, who must be registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), in accordance with subsection (3); and 25
- (d) any other statement or report which the Shareholders Committee may reasonably require.

(2) The report referred to in subsection (1)(b) must deal with the state of affairs, the activities and operations, and the financial position of the Corporation, and must—

- (a) state the extent to which the Corporation, during the financial year concerned, has achieved or advanced its objectives, and refer specifically to— 30
 - (i) the levels of private investment in road traffic;
 - (ii) the levels of contracting out to provincial authorities and local government bodies, the SAPS and any other statutory transport institution vested with road traffic powers; and 35
 - (iii) the degree to which public funding of road traffic is decreased, including any reduction of public funding of negative concessions;
- (b) contain relevant performance information regarding the economical, efficient and effective application of resources including a comparison between planned and actual performance indicators as set out in the business and financial plan; and 40
- (c) indicate the amount of money, if any, received from the State and any other commitment furnished by the State.

(3) The auditor's report referred to in subsection (1)(c) must state separately in respect of each of the following matters whether in the auditor's opinion— 45

- (a) the balance sheet, income statement and cash-flow statement, as well as any other furnished information, fairly represent the financial position and results obtained by the Corporation in accordance with generally accepted accounting practice, as applied on a basis consistent with that of the preceding year; 50
- (b) the information furnished in terms of paragraph (a) is fair in all material respects and, if applicable, on a basis consistent with that of the preceding year;
- (c) the transactions that had come to his or her attention during auditing were in all material respects in accordance with the law and the objects and functions of the Corporation; 55

- (d) adequate measures and procedures exist for the proper application of sound economic, efficient and effective management; and
- (e) attention should be drawn to any other matter falling within the scope of the auditor's examination which, in his or her opinion, the public interest demands should be brought to the notice of the Shareholders Committee, Parliament and the relevant provincial legislatures. 5

(4) A copy of the annual report must, after its approval by the Shareholders Committee, be submitted to the Minister and every MEC who must table it in Parliament and every provincial legislature, as the case may be, within 14 days of receipt of that report, or, if Parliament or a provincial legislature is not then in session, within 14 days after the commencement of its next ensuing session. 10

(5) A copy of the approved annual report must be open to inspection by the public at the head office of the Corporation during business hours.

Transfer of assets and liabilities

23. (1) The Shareholders Committee must, as soon as possible after the commencement of this Act, come to an agreement in respect of— 15

- (a) the extent of national and provincial assets, liabilities, rights and obligations to be transferred to the Corporation in terms of subsection (2);
- (b) the minimum terms and conditions upon which any officer of the national or a provincial Department of Transport who elects to leave the employ of the Department and who is due to be appointed permanently to a position in the Corporation by the chief executive officer— 20
 - (i) may leave the employ of the national or a provincial Department; and
 - (ii) may be employed by the Corporation; and
- (c) any other matter which the Shareholders Committee considers necessary or desirable for the proper functioning of the Corporation. 25

(2) National and provincial assets, liabilities, rights or obligations must be transferred by national and provincial authorities concerned to the Corporation—

- (a) in terms of a Shareholders Committee agreement contemplated in subsection (1)(a), approving the transfer with a view to achieving the objects of the Corporation; and 30
- (b) with the approval of the MEC responsible for finance and the MEC responsible for public works in the province affected by the transfer.

(3) The registrar of deeds in question must, on application by the Shareholders Committee and on lodgement of the relevant title deeds in respect of an asset or a liability transferred to the Corporation in terms of subsection (2), effect such entries and endorsements as he or she considers necessary in any register, title deed or other document in order to register the transfer in the name of the Corporation. 35

(4) The Corporation must be substituted for the State as a contracting party in respect of any contract transferred to the Corporation in terms of subsection (2), without the substitution bringing about novation of such contract. 40

(5) Any litigation resulting from any cause of action in relation to any movable asset, liability, right or obligation transferred to the Corporation in terms of subsection (2) which arose—

- (a) before the transfer date, must be conducted by or against the State, as the case may be; and 45
- (b) on or after the transfer date, must be conducted by or against the Corporation, as the case may be.

CHAPTER 3 FUNDING

Finance

24. (1) The Corporation is funded from—
- (a) monies prescribed, subject to section 48(1)(b), which must include transaction fees charged by the Corporation for the sale of services; 5
 - (b) penalties and fines payable to the Corporation as an issuing authority in terms of section 32 of the Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998);
 - (c) interest on invested cash balances; and 10
 - (d) monies appropriated by Parliament.
- (2) The Corporation must, with the concurrence of the Minister of Finance and every MEC responsible for finance, establish a mechanism to ensure that all fines and penalties paid to the Corporation as an issuing authority in terms of the Administrative Adjudication of Road Traffic Offences Act, 1998, are utilised by the Corporation in respect of road traffic safety. 15
- (3) At the end of each financial year the chief executive officer must report to the Shareholders Committee on any surplus funds of the Corporation, as may be determined by the Minister and every MEC with the concurrence of the Minister of Finance and every MEC responsible for finance in each province. 20
- (4) The Shareholders Committee may direct that payments be made from the surplus funds to a province, but such payments must be proportionate to the relative contribution to the profits generated through the provision of road traffic services in the province or received by an agent acting on behalf of the Corporation within the geographical area of the province. 25
- (5) The Corporation 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 must be deposited the money received by the Corporation and from which payments for it or on its behalf must be made.

Financial viability 30

25. (1) The chief executive officer is the accounting officer of the Corporation and must ensure that the expenses of the Corporation do not exceed its income.
- (2) The Shareholders Committee or the board, as the case may be, must ensure that any directive issued in terms of section 13 falls within the parameters of the business and financial plan. 35
- (3) The Shareholders Committee must obtain the concurrence of the Minister of Finance and every MEC responsible for finance to place at the disposal of the Corporation additional funding from either the national budget or a provincial budget in respect of—
- (a) any directive that has financial implications not foreseen in the business and financial plan; or 40
 - (b) any cost or expense which—
 - (i) is a direct result of any directive issued by the Shareholders Committee or the board, as the case may be; and
 - (ii) the Corporation cannot readily recover from users of road traffic services or any other person who has benefited from any action taken by the Corporation in complying with that directive. 45

Application of Reporting by Public Entities Act

26. The Reporting by Public Entities Act, 1992 (Act No. 93 of 1992), applies to the Corporation after it has been entered as a listed entity as defined in section 1 of that Act. 50

CHAPTER 4 FUNCTIONS

Principal function of Corporation

27. The Corporation and its organs must, jointly and individually, act—
- (a) in the public interest; and 5
 - (b) within the confines of—
 - (i) the approved business and financial plan;
 - (ii) the governance agreement concluded on the appointment of a board by a decision of the Shareholders Committee;
 - (iii) the performance contract concluded between the Shareholders Committee and the chief executive officer referred to in section 15(4); and 10
 - (iv) performance contracts concluded between the chief executive officer and the respective managers of the functional units referred to in section 19(4), 15
- to enhance the overall quality of road traffic management and service provision.

Functions of Shareholders Committee

28. (1) The Shareholders Committee must—
- (a) ensure proper monitoring of the Corporation's performance and the attainment of its objectives, including—
 - (i) the level and scope of performance of the Corporation with reference to the business and financial plan; 20
 - (ii) the performance of public service obligations by the Corporation; and
 - (iii) the impact of investment contracts contemplated in section 37 and performance contracts as contemplated in sections 15(4) and 19(4), by scrutinising reports submitted by the chief executive officer, in terms of section 29(h), including reports, in terms of section 29(c) concerning the implementation of directives issued to the chief executive officer; 25
 - (b) after appropriate consultation, decide—
 - (i) which functions are to be carried out by each of the organs of the Corporation; 30
 - (ii) on proposed legislation, including amendments to this Act or any other legislation, concerning road traffic matters;
 - (iii) on a change in a policy or the adoption of a new policy by the Corporation;
 - (iv) on the suitability of proposals for the achievement of objectives; and 35
 - (v) to recommend the conclusion of an international agreement;
 - (c) approve the final draft of—
 - (i) the business and financial plan and any amendment thereto as contemplated in section 14(5);
 - (ii) the annual report as contemplated in section 22(1); 40
 - (iii) the national road traffic law enforcement code as contemplated in section 32; and
 - (iv) the governance agreement;
 - (d) after appropriate consultation where consultation is required, approve—
 - (i) the awarding of tenders or the granting of concessions above the thresholds as set out in the business and financial plan; and 45
 - (ii) transactions entered into to give effect to transfer actions contemplated in section 34;
 - (e) consult on, and facilitate, the implementation of this Act or any other law relating to road traffic regulation; 50
 - (f) consider the need for research and technical investigation relating to road traffic regulation, and take steps for it to be conducted;
 - (g) require statements and reports from managers of functional units that may be reasonably required in the interest of informed decision-making;
 - (h) respond to complaints received from the public and investigate complaints against the chief executive officer in terms of section 39(3); 55

- (i) publish full particulars of policies decided on in the *Gazette* and every *Provincial Gazette*;
- (j) exercise and perform on behalf of the Corporation the powers and duties which have been conferred to the Corporation by contractual agreement between the MEC and the chief executive officer in terms of section 31; and 5
- (k) exercise and perform all the powers and duties conferred or imposed on it by this Act or by any other law.
- (2) The Shareholders Committee may—
 - (a) authorise the chief executive officer to assign functions to the managers of functional units; 10
 - (b) issue a directive to a member of the public on conclusion of an enquiry by the chief executive officer;
 - (c) re-open an enquiry; and
 - (d) review the findings of an enquiry or refuse a request to review the findings.
- (3) The Shareholders Committee may for the purposes of regulations to be made in 15 terms of section 48—
 - (a) establish an advisory regulations committee;
 - (b) determine the purpose and functions of the advisory regulations committee in respect of regulations, or effect amendments thereto;
 - (c) make appointments to the committee, including the chairperson and the 20 deputy chairperson;
 - (d) remove members from the committee; and
 - (e) dissolve the committee.
- (4) The Shareholders Committee, in appointing a member of the advisory regulations 25 committee, must consider—
 - (a) the powers and duties of the committee;
 - (b) the need for the committee to represent various relevant interests; and
 - (c) the expertise necessary for the committee to exercise its powers and perform its functions effectively.

Functions of chief executive officer 30

- 29.** The chief executive officer of the Corporation must, subject to the performance contract contemplated in section 15(4)—
- (a) manage and control the day-to-day affairs of the Corporation in accordance with the business and financial plan;
 - (b) undertake, in accordance with this Act and any other legislation concerning 35 road traffic matters, the provision and rendering of road traffic services;
 - (c) execute any directive of the Shareholders Committee issued in terms of section 13 and report to the Shareholders Committee on the implementation of the directive;
 - (d) undertake research into road traffic matters; 40
 - (e) after consultation with the Minister of Finance and every MEC responsible for finance, draw up a governance agreement to be concluded between the Shareholders Committee and the board, on the appointment of the board;
 - (f) facilitate private sector investment by—
 - (i) undertaking feasibility and investment studies to ascertain technical, 45 commercial and economical viability of projects;
 - (ii) assisting the private sector to prepare business plans to provide equity and loan finance;
 - (iii) assisting potential private investors to ensure compliance with any legal requirements; and 50
 - (iv) providing the private sector with advice;
 - (g) promote private sector investment in road traffic by—
 - (i) the establishment of investment help lines to assist potential investors;
 - (ii) the publication of investment related publications;
 - (iii) holding national or localised conferences; 55
 - (iv) organising investment contact visits;
 - (v) initiating contacts with other Ministries, Departments, state-owned enterprises, investment promotion centres and related parties;

- (vi) collecting, updating and disseminating appropriate promotional and facilitatory information; and
- (vii) any other appropriate method;
- (h) report to the Shareholders Committee—
 - (i) on the level and scope of performance of the Corporation in terms of the business and financial plan; 5
 - (ii) on the impact of investment contracts contemplated in section 37 and performance contracts contemplated in sections 15(4) and 19(4); and
 - (iii) subject to section 38(2), on whether a private sector entity is better suited to perform the function envisaged in a public contract; 10
- (i) perform the functions assigned to him or her by the Shareholders Committee and the board on its appointment;
- (j) assign functions to the managers of functional units if authorised thereto by the Shareholders Committee in terms of section 28(2)(a);
- (k) exercise and perform all the powers and duties conferred or imposed by this Act or by any other law; and 15
- (l) exercise and perform all the powers and duties incidental to the above-mentioned powers and duties.

Functions of managers of functional units

30. The managers of functional units must— 20
- (a) assist the chief executive officer in the preparation of the business and financial plan;
 - (b) perform or initiate research in respect of business groups;
 - (c) manage contracts concluded by the chief executive officer with business groups for the provision of services; 25
 - (d) assist the chief executive officer in monitoring business groups;
 - (e) advise the chief executive officer at his or her request; and
 - (f) furnish statements and reports to the Shareholders Committee when required to do so in terms of section 28(1)(g).

Agreements relating to functions 30

31. (1) Subject to section 28(1)(b)(i), the MEC of a province may enter into an agreement with the chief executive officer in terms of which the Corporation must perform any stipulated function allocated to the MEC in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996), or any other law relating to road traffic, on behalf of the MEC. 35
- (2) An agreement contemplated in subsection (1) comes into operation on the date of its publication in the *Gazette* and every *Provincial Gazette*.

National road traffic law enforcement code

32. (1) For the purpose of executing the road traffic law enforcement function, the chief executive officer, in consultation with the National Commissioner, must develop a national road traffic law enforcement code that sets out, at least— 40
- (a) uniform national standards for employment of road traffic law enforcement officers;
 - (b) management practices in respect of road traffic law enforcement officers;
 - (c) priorities and strategic direction for road traffic law enforcement officers; 45
 - (d) road traffic law enforcement goals;
 - (e) operating principles and performance levels;
 - (f) human resource practices; and
 - (g) supporting management information and systems to be implemented.
- (2) A draft code must be published in the *Gazette* and every *Provincial Gazette* for interested parties to comment on within a specified time. 50
- (3) The chief executive officer and the National Commissioner must consider all comments before completing the code and submitting it to the Shareholders Committee for approval.
- (4) The code, once approved by the Shareholders Committee, becomes binding on— 55

- (a) provincial authorities and local government bodies irrespective of whether they perform road traffic services under a contract; and
 - (b) any statutory transport institution vested with powers to execute road traffic law enforcement functions for the duration of a contract concluded with the Corporation to provide road traffic law enforcement: Provided that the Code shall only bind the SAPS upon approval thereof by the Minister for Safety and Security. 5
- (5) Every three years the code must, on the recommendation of the Shareholders Committee, be revised.
- (6) Any revision of the code must be published in the *Gazette* and every *Provincial Gazette* for interested parties to comment on, whereupon subsection (4) applies with the necessary changes. 10

Non-compliance with national road traffic law enforcement code

33. (1) The Shareholders Committee may, where it reasonably suspects that any provincial authority or local government body has failed to comply with the national road traffic law enforcement code— 15

- (a) request and obtain information and documents pertaining to the execution of road traffic law enforcement under the control of the provincial authority or local government body in question; and
 - (b) authorise a person to enter any building or premises under the control of the provincial authority or local government body in question for the purpose of obtaining the information and documents referred to in paragraph (a), 20
- and is entitled to all reasonable assistance by any member or employee of the provincial authority or local government body in question.

(2) For the purposes of subsection (1), where the Shareholders Committee establishes that— 25

- (a) a provincial authority or local government body, the SAPS or another statutory institution vested with the powers to perform road traffic law enforcement, with which the Corporation has contracted to provide road traffic law enforcement, has failed to comply with the national road traffic law enforcement code, the Shareholders Committee may terminate the contract and appoint an alternative service provider which may include the Corporation; and 30
- (b) a provincial authority or local government body, which has not been contracted by the Corporation to provide road traffic law enforcement, has failed to comply with the national road traffic law enforcement code, the Shareholders Committee must— 35
 - (i) in the case of a provincial authority, notify the Minister; and
 - (ii) in the case of a local government body, notify the Minister and the MEC concerned. 40

(3) If the Minister pursuant to a notification in terms of subsection (2)(b)(i), is satisfied that a provincial authority has failed to comply with the national road traffic law enforcement code as contemplated in subsection (2)(b)(i), he or she must notify the provincial authority of such failure in writing and request compliance with that code within a period specified in the notice. 45

(4) The Minister may, on the request of the provincial authority extend the period contemplated in subsection (3).

(5) The Minister may, where a provincial authority fails to comply with the national road traffic law enforcement code within the period specified in the notice or the extended period contemplated in subsection (4), and after consultation with the Minister for Provincial Affairs and Constitutional Development— 50

- (a) appoint a person to administer and supervise the provision of road traffic law enforcement by the provincial authority in question and charge such person with the responsibility to ensure that the provision of road traffic law enforcement by such provincial authority complies with the national road traffic law enforcement code; and 55
- (b) take such other steps as he or she considers necessary to ensure compliance with the national road traffic law enforcement code.

(6) A person appointed in terms of subsection (5)(a) may, subject to section 100(2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), exercise 60

all the powers and must perform all the duties of the executive head of the provincial authority concerned.

(7) If the Minister is satisfied that a provincial authority complies with the national road traffic law enforcement code, he or she may terminate the appointment of the person referred to in subsection (5)(a). 5

(8) All expenditure incurred by or in connection with the intervention of the Minister, for the provision of road traffic law enforcement as contemplated in subsection (5) is for the account of the provincial authority.

(9) Upon receipt of a notification contemplated in subsection (2)(b)(ii), the Minister may request the MEC concerned to intervene as contemplated in section 139 of the Constitution of the Republic of South Africa, 1996, and must provide the MEC with a copy of the notification. 10

(10) (a) If the MEC fails to intervene as requested, the Minister may intervene as contemplated in section 100 of the Constitution of the Republic of South Africa, 1996, in which case subsections (13) to (17) applies with the necessary changes. 15

(b) For the purpose of this subsection, any reference in subsections (13) to (17) to—

- (i) the MEC, shall be deemed to be a reference to the Minister;
- (ii) the MEC responsible for local government, shall be deemed to be a reference to the Minister for Provincial Affairs and Constitutional Development;
- (iii) the Premier, shall be deemed to be a reference to the President; 20
- (iv) section 139(2) of the Constitution of the Republic of South Africa, 1996, shall be deemed to be a reference to section 100(2) of the Constitution.

(11) If the MEC is satisfied that a local government body has failed to comply with the national road traffic law enforcement code, he or she must notify the local government body of such failure in writing and request compliance with that code within a period specified in the notice. 25

(12) The MEC may, on the request of the provincial authority, extend the period contemplated in subsection (11).

(13) The MEC may, where a local government body fails to comply with the national road traffic law enforcement code within the period specified in the notice or the extended period contemplated in subsection (12), and after consultation with— 30

- (a) the MEC responsible for local government in the province concerned, or where no such MEC has been appointed, the Premier or the MEC to whom the responsibilities have been assigned by the Premier; and
- (b) the MEC for Safety and Security in the case where road traffic law enforcement is provided by a municipal police service— 35
 - (i) subject to subsection (8), appoint a person to administer the provision of road traffic law enforcement by the local government body in question and charge such person with the responsibility to ensure that the provision of road traffic law enforcement services by such local government body complies with the national road traffic law enforcement code; and 40
 - (ii) take such other steps as he or she considers necessary to ensure compliance with the national road traffic law enforcement code. 45

(14) Where an administrator is appointed in terms of section 64N(4)(a) of the South African Police Service Act, 1995 (Act No. 68 of 1995), that administrator must perform the functions contemplated in subsection (13)(b)(i). 45

(15) A person appointed in terms of subsection (13)(b)(i) may, subject to section 139(2) of the Constitution of the Republic of South Africa, 1996, exercise all the powers and must perform all the duties of the executive head of the local government body concerned. 50

(16) If the MEC is satisfied that a local government body complies with the national road traffic law enforcement code, he or she may terminate the appointment of the person referred to in subsection (13)(b)(i).

(17) All expenditure incurred by or in connection with the intervention of the MEC, in the provision of road traffic law enforcement as contemplated in this section is for the account of the local government body in question. 55

CHAPTER 5 PRIVATE INVESTMENT IN ROAD TRAFFIC

Private investment

34. For the purpose of restructuring the affairs of the Corporation or of privatisation, the chief executive officer may, subject to the approval of the Shareholders Committee— 5

- (a) form companies in terms of the Companies Act, 1973 (Act No. 61 of 1973), and transfer to such companies all or some of the functions performed by any functional unit or parts thereof, and any assets, liabilities, rights and obligations related to the execution of such functions; 10
- (b) subject to section 36, acquire shares in a project company with private shareholding in terms of a joint equity venture; or
- (c) subject to section 37, conclude appropriate investment contracts.

Trading of shares

35. (1) For the purpose of section 34(a), the board of directors of a company in which the Corporation is a shareholder and which is incorporated in terms of the Companies Act, 1973 (Act No. 61 of 1973), may take all steps necessary to— 15

- (a) offer the shares in such company for sale in the manner specified in subsections (5), (6) and (7); or
- (b) subject to subsection (2), exchange the shares of the company for the shares of a company to be merged with such company (hereinafter referred to as the merger company) in the manner specified in subsections (5), (6) and (7). 20

(2) An exchange of shares referred to in subsection (1)(b) may only be undertaken if—

- (a) the entire share capital of the company in which the Corporation is a shareholder is exchanged for a minority shareholding in the merger company and the majority shareholding is privately-owned; or 25
- (b) the merger is effected with another company owned by another state in the Southern African region and the merger is intended to ensure economies of scale to achieve greater financial viability as a precursor to the sale of shares in the merged company. 30

(3) If the board of directors disregards the procedures described in subsection (1) and (2), the Minister and any shareholding MEC may trade their shares in the company concerned.

(4) Where the Minister and any shareholding MEC acts in terms of subsection (3), he or she is entitled to be reimbursed by the company concerned for any costs incurred. 35

(5) The shares referred to in subsection (1) may, with effect from a date specified in the approved business and financial plan, be traded in the manner specified in subsection (6).

(6) The shares may be traded— 40

- (a) after an offer for sale or exchange of such shares has been published by means of a prospectus, immediately before the listing of the company on the Johannesburg Stock Exchange; or
- (b) in terms of a share sale or exchange agreement concluded between the company on the one hand and any approved buyer or barterer on the other. 45

(7) For the purpose of subsection (6)(b), an approved buyer or barterer means a person in respect of whom the sale or exchange of shares, as the case may be, has been approved by the Minister and a shareholding MEC acting on the recommendation of the board of directors of the company concerned.

(8) Subject to subsection (9), shares must be sold or exchanged— 50

- (a) at a price or value which is market related; and

- (b) after a share incentive scheme has been established in terms of which shares may be allocated to the employees of the company in terms of the rules of the Johannesburg Stock Exchange.

(9) The board of directors must, before proceeding with any scheme for the sale or exchange of shares, submit the proposed scheme to the Minister and any shareholding MEC for approval, setting out the manner in which this section have been complied with. 5

Joint equity venture

36. (1) The Corporation may, subject to subsections (2) and (3), conclude an agreement to establish a project company, in which it may be a shareholder together with any individual or private entity or Government of any other state, with the business object of operating or providing road traffic facilities and services, subject thereto that no finance is provided by the exchequer to such joint venture other than for the purposes of taking an equity share. 10

(2) For the purpose of subsection (1), the public shareholding in any project company may only exceed 49% if the agreement specifies a fixed period within which the public shareholding is to be reduced below 50%. 15

(3) The Minister and every MEC must annually report to Parliament and the provincial legislatures, as the case may be, on the feasibility of incrementally reducing public shareholding in a company formed in terms of subsection (1). 20

Road traffic facility and services investment contracts

37. (1) For the purposes of subsection (2)—

- (a) a contract to build-lease-and-transfer means a contract whereby a project contractor finances and constructs a road traffic facility and on its completion leases it to the Corporation for a fixed term after which ownership of the asset is automatically transferred to the Corporation, or any variation, amendment or addition of such terms as may be agreed; 25
- (b) a contract to build-own-and-operate means a contract whereby a project contractor finances, constructs, owns, operates and maintains a road traffic facility with no time limitation imposed on ownership and from which the contractor is allowed to recover its total investment and operating and maintenance costs plus a reasonable rate of return thereon by collecting tolls, fees, rentals or other charges from facility users, or any variation, amendment or addition of such terms as may be agreed, but as long as the contractor is not in violation of its franchise, it may continue to operate the asset in perpetuity; 30
- (c) a contract to build-operate-and-transfer means a contract whereby a project contractor—
 - (i) constructs and finances a road traffic facility;
 - (ii) assumes cost overruns, delays and specified performance risks;
 - (iii) operates and maintains such asset over a fixed term during which the contractor is allowed to charge users appropriate tolls, fees, rentals and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable that contractor to recover its investment and operating and maintenance expenses in the project plus a reasonable rate of return thereon; and 40
 - (iv) transfers the asset to the Corporation at the end of a fixed term, or any variation, amendment or addition of such terms as may be agreed; 45
- (d) a contract to build-and-transfer means a contract whereby a project contractor finances and constructs a road traffic facility and after its completion turns it over to the Corporation, which pays the contractor on an agreed schedule its 50

- total investment expended on the project, plus a reasonable rate of return thereon, or any variation of such terms as may be agreed;
- (e) a contract-add-operate arrangement means a contractual arrangement whereby the project contractor adds to an existing road traffic facility which it is renting from the Corporation and operates such road traffic facility over a fixed period including the transfer of the asset back to the Corporation, or any variation, amendment or addition of such terms as may be agreed; 5
- (f) a contract to rehabilitate-own-and-operate means a contract whereby an existing road traffic facility is turned over to a private person or entity to refurbish and operate with no time limitation imposed on ownership, but as long as the operator is not in violation of its franchise, it may continue to operate the facility in perpetuity or under any variation or amendment or addition to such terms as may be agreed; and 10
- (g) a contract to rehabilitate-operate-and-transfer means a contract whereby an existing road traffic facility is— 15
- (i) turned over to a project contractor to refurbish and operate for a fixed period, at the expiration of which legal title to the asset is turned over to the Corporation; or
- (ii) leased to a project contractor to refurbish and operate for a fixed period, and may include the purchase of an existing facility from abroad, importing, refurbishing, erecting and consuming it within the Republic, or any variation, amendment or addition of such terms as may be agreed. 20
- (2) The procurement of any investment in terms of section 34(c) must be effected through the conclusion of an appropriate investment contract which—
- (a) in the case of a publicly-owned road traffic facility, may include— 25
- (i) a contract to build-own-and-operate or a variant thereof;
- (ii) a contract to rehabilitate-own-and-operate or a variant thereof;
- (iii) a contract to rehabilitate-operate-and-transfer or a variant thereof;
- (iv) a build-operate-and-transfer, build-and-transfer or build-lease-and-transfer contract or variant thereof; 30
- (v) a leasing contract, including a contract-add-operate arrangement or variant thereof;
- (vi) a joint equity venture contract; or
- (vii) a management contract; and
- (b) in the case of road traffic services, may include— 35
- (i) a management contract for the supervision and co-ordination of agents within—
- (aa) a province on a provincial level;
- (bb) a metropolitan area on a metropolitan level; or
- (cc) a local area on a local level; and 40
- (ii) a services supply contract for—
- (aa) road traffic law enforcement, subject to section 38(3);
- (bb) vehicle registration and licensing service, or issuing of special permits or both services;
- (cc) roadworthiness testing service at a vehicle testing station in respect of heavy vehicles, light motor vehicles or both; 45
- (dd) driver testing in respect of learner driver licensing, driver licensing for light motor vehicles or motor cycles and driver licensing for heavy vehicles or all the services;
- (ee) public payment service only; 50
- (ff) auditing of agents for performance and compliance; and
- (gg) any other road traffic service.
- (3) For the purposes of this section, the chief executive officer must develop standard contracts in accordance with prescribed guidelines.
- (4) A contract involving a publicly funded negative concession, must provide for— 55
- (a) targets for possible reduction of exchequer finance, linked to time scales;

- (b) fixed periods at which the contract will be reviewed to ascertain whether—
 - (i) targets have been met; and
 - (ii) targets need to be renegotiated or the contract terminated;
 - (c) separate accounting records; and
 - (d) the exercise by the Corporation of the right to— 5
 - (i) request a report from the contractor on the financial aspects of the operations;
 - (ii) conduct an audit of the books of account of the contractor; and
 - (iii) enter the premises of the contractor to inspect any facility or document.
- (5) Nothing in this Act prevents the conclusion of any combination of two or more of the contracts referred to in subsection (2) to facilitate the provisioning of a road traffic facility and service. 10
- (6) The Shareholders Committee may, on advice of the chief executive officer, approve any variation of the contracts referred to in subsection (2).
- (7) The negotiation of a contract must be confidential and no party to the negotiations may reveal to any other person any technical, price or other information relating to the negotiations without the consent of the other party. 15
- (8) The chief executive officer must submit quarterly reports to the Shareholders Committee on progress being achieved with the reduction of exchequer finance during the duration of a contract involving a publicly funded negative concession. 20

CHAPTER 6

CONTRACTING OUT TO PROVINCIAL AUTHORITIES AND LOCAL GOVERNMENT BODIES

Appointment of agents

38. (1) Where the Corporation appoints a local government body as its agent or contracts with a local government body to perform any function relating to any road traffic facility, the contract may provide for— 25
- (a) the temporary or permanent transfer of assets from the local government body concerned to the Corporation; and
 - (b) compensation by the Corporation to the local government body concerned for that transfer. 30
- (2) The Corporation may only contract out the provision of road traffic law enforcement to a provincial authority, a local government body, the SAPS or another institution vested by law with the power to execute road traffic law enforcement functions. 35
- (3) Where the Corporation concludes a contract for the provision of road traffic law enforcement services, as contemplated in section 37(2)(b)(ii)(aa), the contract must, subject to subsection (4), at least—
- (a) for the purpose of measuring the performance of the agent, incorporate the provisions of the national road traffic law enforcement code in respect of— 40
 - (i) performance targets; and
 - (ii) performance indicators;
 - (b) provide that non-compliance with the national road traffic law enforcement code results in the termination of the contract;
 - (c) provide that the Corporation must, for its own account, carry all negotiated costs relating to the provision of road traffic law enforcement; 45
 - (d) provide that any penalties or fines collected by the service provider, in accordance with the Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998), are paid to the Corporation; and
 - (e) provide that the service provider that provides road traffic law enforcement in an area where a municipal police service established in terms of section 64A of the South African Police Service Act, 1995 (Act No. 68 of 1995), also has jurisdiction, must participate in any appropriate policing co-ordinating committee established for that area in terms of section 64K of the South African Police Service Act, 1995. 50 55

(4) The provision of road traffic law enforcement must be contracted out even before the national road traffic law enforcement code is finalised, and the contracts concluded before the finalisation must be renegotiated on the entry into force of the code.

(5) The chief executive officer must reassess contracts for the provision of any road traffic service, including road traffic law enforcement, concluded with any provincial authority or local government body every two years. 5

(6) For the purpose of this section, the chief executive officer must develop standard contracts in accordance with prescribed guidelines.

(7) Despite a provision of any other law, any monies paid by the Corporation to the SAPS in accordance with a contract contemplated in subsection (3), shall be deemed to be monies appropriated by Parliament for the SAPS for the financial year in which the monies are paid to the SAPS. 10

CHAPTER 7 COMPLIANCE AND MONITORING

Compliance, monitoring and regulatory approach 15

39. (1) The Shareholders Committee is responsible for ensuring that compliance and monitoring are undertaken in terms of this Act, and must be assisted for that purpose by—

- (a) the chief executive officer; and
- (b) the managers of functional units. 20

(2) For the purpose of subsection (1), the Shareholders Committee may conduct an independent investigation, survey or audit, and must—

- (a) request the chief executive officer to report on compliance with the business and financial plan at intervals determined in the business and financial plan; and
- (b) respond to a complaint received from any person. 25

(3) Any complaint regarding the chief executive officer must be submitted to the Shareholders Committee or the Minister for investigation.

Monitoring duties and powers of chief executive officer

40. (1) The monitoring duties of the chief executive officer are to—

- (a) receive a complaint from any person regarding non-compliance as contemplated in section 41 and direct such complaint to the manager of the functional unit concerned for further action; 30
- (b) monitor, and report to the Shareholders Committee on, compliance by the Corporation with public service obligations, which include—
 - (i) levels of public safety as described in the business and financial plan or the governance agreement, whichever is applicable; 35
 - (ii) quality and levels of service as described in that plan or that agreement, whichever is applicable; and
 - (iii) pricing of services as described in that plan or that agreement, whichever is applicable; and 40
- (c) monitor and report to the Shareholders Committee on—
 - (i) the level of, and potential for further, private sector involvement in road traffic service provision;
 - (ii) the level of, and potential for further, involvement by provincial authorities and local government bodies in road traffic service provision; 45
 - (iii) the development of, and potential for, monopolistic practices arising from performance in terms of investment contracts, and strategies to discourage such or similar practices; and
 - (iv) the impact of the Corporation's activities on other transport modes and its contribution to modal complementarity. 50

- (2) The chief executive officer may—
- (a) request the manager of the functional unit concerned to report on compliance with the business and financial plan at intervals determined by the chief executive officer;
 - (b) respond to a complaint received from any person; and
 - (c) conduct an independent investigation, survey or audit.
- (3) The chief executive officer must, prior to conducting an audit in terms of subsection (1)(c), publish a notice in a Sunday newspaper inviting any person or entity to provide written comments or suggestions regarding compliance.

Complaints to chief executive officer

41. (1) Any person or agent who is directly affected by—
- (a) discrimination or a discriminatory ruling by the manager of a functional unit;
 - (b) failure on the part of the Corporation to execute its functions in accordance with the laws concerning road traffic; or
 - (c) negligence on the part of the Corporation,
- may lodge a complaint with the Minister, any MEC or the Shareholders Committee who must submit it to the chief executive officer.
- (2) A complaint lodged in terms of subsection (1) must consist of a statement made under oath or a solemn declaration which details the nature or contents of the alleged discrimination, failure or negligence.
- (3) The chief executive officer must investigate a complaint from any person regarding non-compliance by a manager of a functional unit or the Corporation if the allegations contained in that complaint constitute a *prima facie* case of discrimination, failure or negligence.
- (4) The chief executive officer must notify the manager of the functional unit concerned of a complaint received with regard to that manager and of his or her intention to investigate any allegation of discrimination, failure or negligence.
- (5) If subsequent to an investigation contemplated in subsection (3), the chief executive officer is of the opinion that the manager of the functional unit is guilty of such discrimination, failure or negligence, the chief executive officer, subject to subsection (6)—
- (a) must in writing direct the manager of the functional unit concerned to rectify the discrimination, failure or negligence within a reasonable time; and
 - (b) may in writing direct the manager of the functional unit concerned to pay full or partial compensation for any monetary loss sustained by the person who has lodged the complaint.
- (6) The chief executive officer may not act in terms of subsection (5) unless he or she has—
- (a) notified the manager of the functional unit concerned in writing of his or her intention to act in terms of that subsection and has informed the manager of all the relevant facts pertaining to the complaint lodged in terms of subsection (1); and
 - (b) afforded the manager of the functional unit concerned the opportunity to make representations to him or her in respect of the discrimination, failure or negligence, within a reasonable time.
- (7) Any person may submit information to the chief executive officer regarding the existence of any constraint which hinders investment in road traffic or which detrimentally affects the efficiency, affordability or safety of road traffic service provision.
- (8) The chief executive officer must, on receipt of any information specified in subsection (7), submit a recommendation to the Shareholders Committee in this regard.

Contract compliance monitoring

42. The chief executive officer must monitor compliance with the provisions of every contract concluded, or purported to have been concluded, under this Act.

CHAPTER 8 MISCELLANEOUS

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Procurement

43. Any procurement under this Act must be undertaken in terms of the prescribed procedures.

Consultation

44. The chief executive officer— 10
- (a) must, in support of the execution of the Corporation's functions, consult, on the request of the Shareholders Committee or the board or as the need arises, with other interested government departments, companies, agencies, local governments, private business or international authorities and relevant stakeholders; and 15
 - (b) may for that purpose develop and maintain appropriate stakeholder consultative networks and establish appropriate stakeholder consultative forums.

Innovation

45. (1) The Shareholders Committee must encourage innovative projects which entail technology transfers at the expiry of a concession period through— 20
- (a) the use of national goods and services;
 - (b) training and employment of citizens; and
 - (c) research and development.
- (2) The Shareholders Committee may, for the purpose of encouraging innovative projects, technology transfers and research and development, negotiate tax relief incentives for private sector contractors with the Minister of Finance. 25
- (3) The Shareholders Committee may direct that any bidder, who in preparing a bid has undertaken innovative research which is useful, be reimbursed either partially or fully for bidding costs irrespective of whether the bid is successful or not.

Enquiries 30

46. (1) The chief executive officer may conduct any enquiry concerning road traffic, and must announce his or her intention to conduct an enquiry by publishing a notice in the *Gazette* and every *Provincial Gazette*—
- (a) indicating the time and place at which such enquiry will be conducted;
 - (b) specifying the subject-matter of the enquiry; and 35
 - (c) inviting interested persons to—
 - (i) submit written representations to the chief executive officer; or
 - (ii) indicate whether they wish to submit oral representations to the chief executive officer.
- (2) Any written representation made by any person in pursuance of an invitation referred to in subsection (1)(c)(i) is open to inspection at the premises of the Corporation during normal business hours. 40
- (3) A written representation referred to in subsection (2), or a certified copy thereof, must be furnished on request to any person after payment of the prescribed fee.
- (4) The chief executive officer may cause a notice to be served on any person requiring such person to appear at a place and time specified in such notice for the purpose of an enquiry. 45
- (5) The chief executive officer must conduct an enquiry—
- (a) in accordance with the prescribed procedure; and

- (b) in public, unless the Minister grants permission for an enquiry to be conducted *in camera*.

(6) The Shareholders Committee or the board may, on the recommendation of the chief executive officer at the conclusion of the enquiry, issue a directive requiring a person to undertake an action or cease to perform an action in compliance with this Act or any other law in terms of which the Corporation may execute road traffic functions. 5

(7) A directive referred to in subsection (6) is, subject to subsection (9) and judicial review, binding on the person to whom it is addressed.

(8) The chief executive officer must provide the party or parties with written copies of his or her findings pursuant to an enquiry in terms of this section and must specify the content of any directive issued and any action to be taken pursuant thereto. 10

(9) Any person who is aggrieved by the outcome of an enquiry or the content of a directive addressed to him or her may in writing request the Shareholders Committee or the board to review the findings or any action taken pursuant thereto.

(10) The Shareholders Committee or the board, as the case may be, must, on receipt of a request referred to in subsection (9)— 15

(a) inform all interested parties that the request has been received; and

(b) invite further representations from any party.

(11) The Shareholders Committee or the board, as the case may be, may, after having taken the steps referred to in subsection (10)— 20

(a) re-open the enquiry; or

(b) refuse the request and provide the applicant with written reasons for such refusal.

Right to review or appeal

47. (1) Any person who is affected by a decision of the chief executive officer or any other employee of the Corporation taken, or purported to have been taken, in terms of this Act or another law administered by the Corporation must exercise his, her or its rights in respect of that decision in terms of the rules of the High Court having jurisdiction, within 30 days after that person became aware of that decision, or within such further period as that Court may allow on good cause shown. 25 30

(2) The Court referred to in subsection (1) may—

(a) confirm, vary or set aside the relevant decision of the chief executive officer or that employee, as the case may be;

(b) give such other decision as the chief executive officer or that employee, as the case may be, was able to give; or 35

(c) remit the case to the chief executive officer or that employee, as the case may be, with the instructions it thinks fit.

(3) The Court referred to in subsection (1) may issue any order regarding costs which it considers fair under the circumstances.

(4) A decision given by the Court in terms of subsection (2)(b) is deemed, for purposes of the laws contemplated in subsection (1), to be a decision of the chief executive officer or of that employee, as the case may be. 40

Regulations

48. (1) The Minister may, after consultation with the Shareholders Committee, make regulations relating to— 45

(a) any matter which may or must be prescribed in terms of this Act;

(b) subject to subsection (2), any monies that may be charged by the Corporation or that accrue to the Corporation in terms of this Act; and

(c) any matter which is necessary to prescribe in order to achieve the objectives of this Act. 50

(2) A regulation may only be made in terms of subsection (1)(b) with the concurrence of the Minister of Finance and after consultation with the Shareholders Committee.

(3) A regulation may provide for such incidental, supplementary or transitional matters as may be necessary, including for penalties of a fine or imprisonment for a period not exceeding two years for a contravention thereof.

(4) A regulation—

- (a) may not come into operation less than 30 days after its publication in the *Gazette* and every *Provincial Gazette*; 5
- (b) must be tabled in Parliament by the Minister within 14 days of its publication as contemplated in paragraph (a) or, if Parliament is not then in session, at the commencement of its next ensuing session; and
- (c) must be tabled in each provincial legislature by the MEC within 14 days of its publication as contemplated in paragraph (a) or, if the legislature is not then in session, at the commencement of its next ensuing session. 10

Restriction on use of name

49. No person may under a name containing the words “Road Traffic Management Corporation” or the translation thereof in any other official language— 15

- (a) conduct his, her or its affairs or business or carry on his, her or its occupation or trade;
- (b) be registered or licensed in terms of any legislation; or
- (c) falsely claim to be acting on behalf of the Corporation.

Limitation of liability 20

50. No employee of the Corporation, nor the Corporation, is liable in respect of anything done or omitted in good faith in the exercise of a power or the performance of a duty in terms of this Act, or in respect of anything that may result therefrom.

Interim arrangements

51. Despite anything to the contrary in any other law, the national and provincial authorities contemplated in section 23(2) must take the steps, or authorise anything to be done, which may be necessary to promote— 25

- (a) the transfer to the Corporation of the assets, liabilities, rights or obligations contemplated in section 23(2);
- (b) the employment by the Corporation of officers of the national or provincial Departments as contemplated in section 23(1)(b); and 30
- (c) the commercialisation and setting up of functional units in respect of road traffic functions before the Corporation commences with the performance of its functions.

Offences 35

52. Any person who—

- (a) fails to comply with a notice to attend a hearing served in terms of section 46(4);
- (b) fails to comply with any directive issued in terms of section 46(6); or
- (c) contravenes a provision of section 49, 40

is guilty of an offence and liable on conviction to a fine or a period of imprisonment not exceeding two years.

Short title and commencement

53. (1) This Act is called the Road Traffic Management Corporation Act, 1999, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 45

(2) Different dates may be determined in terms of subsection (1) for the commencement of different provisions of this Act and dates so fixed may differ in respect of different provinces.

MEMORANDUM ON THE OBJECTS OF THE ROAD TRAFFIC MANAGEMENT CORPORATION BILL, 1999

1. Introduction

- 1.1 Road traffic in South Africa is currently regulated by the Road Traffic Act, 1989 (Act No. 29 of 1989). In 1996 the National Road Traffic Act, 1996 (Act No. 93 of 1996), was passed by Parliament, but it has not been put into operation. In the course of the last two years, each province has adopted its own road traffic legislation, but these pieces of legislation are also not yet operative.
- 1.2 The regulation of road traffic is of vital importance to the development, safety and quality of life of all citizens of the Republic. However, there is at present a need—
 - (a) to enhance the overall quality of road traffic in South Africa;
 - (b) to promote safety, security, order, discipline and mobility on the roads;
 - (c) to protect road infrastructure and the environment through the adoption of innovative road traffic practices and technology;
 - (d) to strengthen co-operation and co-ordination between national, provincial and local spheres of government;
 - (e) to phase out public funding of road traffic services and infrastructure, and to expand private investment; and
 - (f) to maximise the constructive role of local government in road traffic.

2. Main objectives

The main objectives of the Bill are therefore—

- (a) to enhance the overall quality of road traffic service provision and to ensure safety, security, order, discipline and mobility on the roads;
- (b) to phase out public funding and phase in private sector investment in road traffic;
- (c) to introduce commercial management principles to guide road traffic governance in the interest of better service provision;
- (d) to optimise the use of public funds by limiting investment of public funds in road traffic and securing full cost recovery on the basis of the user-pays principle;
- (e) to strengthen inter-governmental co-operation in road traffic matters;
- (f) to stimulate research and improve the exchange and dissemination of information on road traffic matters; and
- (g) to establish the Road Traffic Management Corporation as a partnership between national, provincial and local spheres of government.

3. Detailed provisions

- 3.1 The Bill is divided into eight Chapters. Chapter 1 contains the introductory provisions, namely the definitions and the objectives of the Bill.
- 3.2 Chapter 2 deals with the establishment and governance of the Road Traffic Management Corporation. It is a juristic person that must perform its functions in an independent and impartial manner. It is controlled by the Shareholders Committee, consisting of the Minister of Transport, the MECs responsible for road traffic in the provinces and one representative nominated by the national organisation recognised in terms of section 2(a) of the Organised Local Government Act, 1997 [known and referred to as the South African Local Government Association (Salga) in the White Paper on Local Government]. The Shareholders Committee constitutes a forum for co-operation between the national, provincial and local spheres of government. It must direct and guide the proper functioning of the Corporation in the public interest and in a spirit of co-operation and mutual trust.

Under clause 8 the Shareholders Committee may appoint a board, with delegated powers, comprising the chief executive officer and a maximum of eight persons from the public and the private sectors, on the conditions set out in clause 10.

Clause 11 deals with the meetings of the Shareholders Committee. In terms of clause 12 a special majority is required for certain decisions. Under clause 13 the Shareholders Committee or the board, as the case may be, may issue directives to the chief executive officer of the Corporation. These directives must be tabled in Parliament and the provincial legislatures.

In terms of clause 15 the Shareholders Committee must appoint a chief executive officer for the Corporation, who must prepare the business and financial plan in accordance with clause 14.

The Shareholders Committee must, in terms of clause 18, establish functional units for a number of specified functional areas. Functional units, structured to best give effect to country-wide functioning, are managed along business lines, as financially ring-fenced units, by managers appointed by the chief executive officer in terms of clause 19. Within each of these functional units, the chief executive officer may, in terms of clause 21 and in accordance with the business and financial plan, contractually appoint one or more business groups as its agents to provide road traffic services related to the functional area in question.

The chief executive officer may appoint the necessary staff for the Corporation under clause 20, while the Minister may appoint a secretariat for the Shareholders Committee under clause 17. Annual reports by the Shareholders Committee (in terms of clause 16) and the chief executive officer (in terms of clause 22) must be submitted to Parliament and each provincial legislature. Clause 23 regulates the transfer of assets and liabilities by the Department of Transport and the provincial authorities to the Corporation.

3.3 Chapter 3 deals with the funding of the Corporation, which consists of—

- (a) monies prescribed by regulation that may be charged by the Corporation, which include transaction fees for services rendered by the Corporation;
- (b) penalties and fines payable to the Corporation as an issuing authority under section 32 of the Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998);
- (c) interest on investments; and
- (d) monies appropriated by Parliament.

The chief executive officer is the accounting officer of the Corporation, and must comply with the directives of the Shareholders Committee.

3.4 Chapter 4 gives a complete exposition of the functions of the Shareholders Committee (clause 28), the chief executive officer (clause 29) and managers of functional units (clause 30).

Under clause 31 the MEC of a province may enter into an agreement with the chief executive officer in terms of which the Corporation must perform any stipulated function of the MEC in terms of any law relating to road traffic.

In terms of clause 32 the chief executive officer, in consultation with the National Commissioner of the SAPS, must develop a national road traffic law enforcement code for approval by the Shareholders Committee. As soon as approved, the code becomes binding on:

- (a) provincial authorities and local government bodies irrespective of whether they perform road traffic law enforcement services in terms of a contract with the Corporation; and
- (b) any statutory transport institution vested with powers to perform road traffic law enforcement services for the duration of a contract concluded with the Corporation. The code will, however, only bind the SAPS if approved by the Minister for Safety and Security.

Clause 33 sets out the remedying procedure that the Corporation may resort to in the event of non-compliance with the national road traffic law enforcement code.

Where the Shareholders Committee reasonably suspects that any provincial authority or local government body providing law enforcement services has failed to comply with the code, it may take steps to obtain information to verify whether

this is factually correct. Where the Shareholders Committee establishes failure to comply with the code, it may—

- (a) in the case where a contract has been concluded between the Corporation and a provincial authority or local government body, terminate the contract and appoint an alternative service provider; and
 - (b) in the case where no contract has been concluded and a provincial authority or local government body carries out law enforcement services in terms of legislation only, follow an administrative procedure to effect compliance, which may culminate in the appointment of an administrator. The administrator administers the provision of road traffic law enforcement services by the provincial authority or local government body in question until such time as compliance with the code takes place.
- 3.5 Chapter 5 regulates private investment in road traffic. The provision of law enforcement services is, however, exclusively reserved for provincial authorities, local government bodies, the SAPS or another institution vested with the powers to execute law enforcement functions. Clause 34 empowers the chief executive officer, with the approval of the Shareholders Committee, to—
- (a) form companies and transfer functional units, including assets, rights and obligations, to them and trade shares in them, subject to clause 35;
 - (b) acquire shares in a project company with private shareholding in terms of a joint equity venture contemplated in clause 36; or
 - (c) conclude appropriate investment or concession contracts contemplated in clause 37.
- 3.6 Chapter 6 authorises the contracting out of the provision of services by the Corporation to provincial authorities, local government bodies, the SAPS and any other institution vested with powers to execute road traffic law enforcement functions. The Corporation may also conclude management contracts with agents. Such contracts may provide for the temporary or permanent transfer of assets by a local government body to the Corporation and may be subject to compensation as agreed. A contract for the provision of law enforcement services must incorporate the provisions of the national traffic law enforcement code in respect of performance targets and indicators as well as other stipulated provisions, for example, that the contract will be terminated in the event of non-compliance, and that fines and fees collected by service providers in terms of the Administrative Adjudication of Road Traffic Offences Act, 1998 (Act No. 46 of 1998), must be paid to the Corporation.
- Contracts with provincial authorities and local government bodies must be reassessed every two years. Where the provisions of the contract have not been complied with, the Shareholders Committee holds a right of termination.
- 3.7 Chapter 7 deals with compliance and monitoring. In terms of clause 39 the Shareholders Committee must ensure compliance and monitoring, with the help of the chief executive officer and the managers of functional units. The chief executive officer must, in terms of clause 40, receive complaints relating to non-compliance (for example, discriminatory rulings by a manager of a functional unit, or failure or negligence by the Corporation to perform its functions), investigate them or refer them to the manager concerned and report to the Shareholders Committee. Any complaint against the chief executive officer must be submitted to the Shareholders Committee or the Minister for investigation. The chief executive officer must also monitor compliance with contracts as contemplated in clause 42.
- 3.8 Chapter 8 deals with miscellaneous matters. In terms of clause 43 procurement must be undertaken in terms of procedures prescribed by the Minister by regulation. In terms of clause 44 the chief executive officer is obliged, in support of the execution of the Corporation's functions, to consult, upon the request of the Shareholders Committee or the board or as the need arises, with other interested government departments, companies, agencies, local governments, private business or international authorities and other relevant stakeholders. In terms of clause 45 the Shareholders Committee must encourage innovative projects, which entail technology transfers, through—
- (a) the use of national goods and services;

- (b) training and employment of citizens; and
- (c) research and development.

In terms of clause 46 the chief executive officer may conduct enquiries concerning road traffic. In terms of clause 47 any person whose legal rights have been affected by a decision in terms of the Bill or any law administered by the Corporation, has access to the High Court in terms of its rules.

The Minister may make regulations in terms of clause 48 on certain matters. Regulations pertaining to funding require the concurrence of the Minister of Finance. Clause 49 restricts the use of the words "Road Traffic Management Corporation", and clause 50 limits the liability of any person who acts in terms of the Bill. Clause 51 regulates certain interim arrangements in connection with the transfer of assets to the Corporation, the employment by the Corporation of officers of the national and provincial departments and the establishment of functional units prior to the functioning of the Corporation. Clause 52 creates certain offences.

4. Parliamentary procedure

The State Law Advisers are of the opinion that the Bill must be dealt with by Parliament in accordance with the procedure established by section 76(1) or (2) of the Constitution of the Republic of South Africa, 1996, since it falls within the functional area of "Road Traffic Regulation" listed in Schedule 4 to the Constitution.

5. Consultation

Numerous consultative meetings were held during the drafting of the legislation. The draft legislation was published for general comment on 19 October 1998 as part of a package comprising the Administrative Adjudication of Road Traffic Offences Amendment Bill and the National Road Traffic Amendment Bill. Moreover, one national workshop and nine provincial workshops were held to discuss and comment on the legislation during January 1999.

The model impacts on all spheres of Government. Opportunity for comment and input, discussion and consultation, have been allowed and used to clarify issues surrounding the Corporation and its organs. The following departments, bodies and individuals participated in consultative meetings or commented on the Draft Bill:

1. National departments

All national departments were consulted, and specifically, the Department of Finance.

2. Provincial departments

All provincial departments were consulted. The first meetings with officials commenced during May 1998. On 18 September, MINCOM decided to consult the executive. Provinces took it upon themselves to approach the various executive committees. All executive committees have been consulted.

MINCOM also decided that the consultation process with local authorities, labour unions, licencing officials, law enforcement officers and the public must be undertaken by the provinces.

3. Local government

SALGA and a vast number of mayors and officials from the Western Cape, KwaZulu-Natal and Mpumalanga were consulted, including councilors and all mayors in Gauteng. The Durban metropolitan substructure had the opportunity to give input.

4. Conferences

The consultation process went ahead during the 1998 Annual Transport Conference, which was held in Pretoria.

5. Individuals and institutions

Individuals and institutions who were consulted and supplied comments, include:

Mr AWJF Everson, Municipality of Ashton

Mr GTJ Geldenhuys, CEO Malelane Municipality

Mr JC Putter

Mr RJ Rakgoale, Public Works, Roads and Transport, Free State

Mr F Steyn, Secretary Local Government, White River

Mr G Tighy, SABOA

Mr GP de Wet, Centurion Traffic Department

Mr Engelbrecht, Advocate & Gauteng KODOK

Mr H Lemmer, Road Freight Association

Road Freight Association Head Office and Gauteng, Eastern Cape, Western Cape and KwaZulu-Natal Offices

T Msibi, International Relations Officer, Department of Transport

Mr P Meyer, Transport and Works, Western Cape

Dr T Geldenhuys, South African Police Services

TR Grimbeek, Institute of Traffic and Municipal Police Officers of Southern Africa

Mr AM Peters/Mr EJ Moller, City Engineer's Unit

Mr RF Peterson, DDG, Transport and Works, Western Cape

Mr OA Retief, Moorreesburg Municipality

Mr GDN Tsotsetsi, Chief Registrar of Deeds

Mr HJK Müller, Khayalami Metropolitan Council

Mr S van den Bergh, Port Elizabeth, Traffic & Licencing Services

ILO

ITO

Imatu

Salga

SATCC-TU

Gauteng Transport Co-ordinating Committee

Gauteng Standing Committee Provincial Legislature

Gauteng Traffic Management Group

The legislation was revised in accordance with comments received from stakeholders wherever appropriate.

