

THE NATIONAL ROAD FUND ACT, 2002

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GOVERNMENT OF ZAMBIA**ACT****No. 13 of 2002****Date of Assent: 31st December 2002**

An Act to establish the National Road Fund Agency and to define its functions; to establish the National Road Fund; and to provide for matters connected with or incidental to the foregoing.

[31st December, 2002]

ENACTED by the Parliament of Zambia.**Enactment****PART 1
PRELIMINARY**

1. This Act may be cited as the National Road Fund Act, 2002 and shall come into Operation on such date as the Minister **may, by** statutory instrument, appoint.

Short title and commencement

2. (1) In this Act, unless the context otherwise requires-
"appointed date" means the date appointed under section one, Agency " means the National Road Fund Agency established by section *three*;
Chairperson " means the person appointed as Chairperson of the Agency under section five;
"Director " means the person appointed as director under section *fourteen*;
"Local Authority " means a city council, municipal council or district council established under the Local Government Act;
"maintenance " means the preservation of roads, including repair of road surfaces, road sides, structures and road furniture necessary for the safe and efficient utilisation of roads;
"member" means a member of the Agency or a committee of the Agency;
"road " has the meaning assigned to it in the Public Roads Act;
"Road Development Agency" means the Road Development Agency established under the Public Roads Act;
"Road Fund" means the National Road Fund established under section *sixteen*;

Interpretation**Cap. 281****Act No. 12
of 2002****Act No. 12
of 2002**

"road furniture" means accessories of a road that make a road safe for traffic on the road and includes traffic lights, traffic signs, guard rails and rest area facilities;

**Act No. 11
of 2002**

"Road Transport and Safety Agency" means the Road Transport and Safety Agency established under the Road Traffic Act;

**Act No. 11
Of 2002**

"road user charges" includes fees levied by the Agency under the provisions of this Act for construction, rehabilitation and maintenance of roads;

"traffic" has the meaning assigned to it in the Road Traffic Act;

**Act No. 12
of 2002**

" traffic sign " has the meaning assigned to it in the Public Roads Act; and

"vehicle" has the meaning assigned to it in the Road Traffic

**Act No. 11
of 2002**

PART II

THE NATIONAL ROAD FUND AGENCY

3. There is hereby established the National Road Fund Agency which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform.

**Establishment
of Agency**

4. **(1)** The functions of Agency shall be to-

- (a) administer and manage the Road Fund;
- (b) prepare and publish audited annual accounts of the Road Fund,
- (c) recommend to the Minister fuel levy and other road user charges and tariffs as required;
- (d) recommend to the Minister projects for funding;
- (e) allocate resources-
 - (a) for the construction, maintenance and rehabilitation Of roads based on a percentage of the annual work programme of the Road Development Agency; and
 - (b) for road transport, traffic and safety management based on a percentage of the annual work programme of the Road Transport and Safety Agency;

**Functions of
Agency**

(f) in consultation with the Road Development Agency, recommend funding for development of new roads, and
(g) undertake such other activities as are conducive or incidental to its functions under this Act.

5. (1) The Agency shall consist of part-time members appointed by the Minister as follows:

- (a) one representative of the Zambia Association of Chambers of Commerce and Industry;
- (b) one representative of the National Council for Construction;
- (c) one representative of the Zambia Institute of Chartered Accountants;
- (d) one representative of the Economics Association of Zambia;
- (e) one representative of the Transporters Associations;
- (f) one representative from the Law Association of Zambia;
- (g) one representative from the Chartered Institute of Transport;
- (h) one representative of the Attorney-General; (i) one representative from-
 - (i) the ministry responsible for finance;
 - (ii) the ministry responsible for communications and transport; and
 - (iii) the ministry responsible for works and supply;
- (j) the Director of the Road Development Agency;
- (k) the Director of the Road Transport and Safety Agency; and
- (l) one other person.

Composition of Agency

(2) The Director of the Road Development Agency and the Director of the Road Transport and Safety Agency referred to in paragraphs (j) and (k) of subsection (1) shall be *ex-officio* members of the Agency and shall have no vote.

(3) The Chairperson shall be appointed by the Minister.

(4) The Vice-Chairperson shall be elected by the members of the Agency from among their number.

(5) The Agency shall report to the Committee of Minister on Road Maintenance Initiative at such times and at such places as the Minister may determine.

(6) The Committee of Ministers referred to in subsection (5) shall comprise the Minister responsible for communications and transport who shall be the Chairperson, the Minister responsible for works and supply who shall be the Vice-Chairperson and the Ministers responsible for finance and national planning, local government and housing,

energy and water development, agriculture and co-operatives, tourism, environment and natural resources and legal affairs.

(7) A person shall not be appointed as a member of the Agency if the person-

(a) is an undischarged bankrupt;

(b) has been convicted of an offence involving fraud dishonesty; or

(c) has been convicted of an offence under any other written law and sentenced to a term of imprisonment of not than six months, without the option of a fine.

(8) For the purpose of this section "Committee of Minister on Road Maintenance Initiative" means a Committee responsible for the institution of sustainable road maintenance.

6. (I) Subject to the other provisions of this Act, a member of the Agency shall hold office for a period of three years from the date appointment and shall be eligible for re-appointment for one further term of three years:

Provided that the first members shall be appointed for periods ranging from two to three years in order to facilitate retirement by rotation

(2) A member other than an *ex-officio* member may resign upon giving one month's notice, in writing, to the organisation which nominated the member and to the Minister.

(3) The office of the member shall become vacant-

(a) upon the member's death;

(b) if the member is absent without reasonable excuse from three consecutive meetings of the Agency of which the member has had notice;

(c) on ceasing to be a representative of the organisation which nominated the member;

(d) if the member becomes mentally or physically incapable of performing the duties of a member of the Agency; or

(e) if the member is declared bankrupt.

(f) if the member is convicted of an offence involving fraud dishonesty; or

(g) if the member is convicted of an offence against any other written law and is sentenced to a term of imprisonment not less than six months without the option of a fine."

(4) On the expiration of the period for which a member is appointed the member shall continue to hold office until a successor has be appointed but in no case shall the further period exceed four months.

Tenure of office and vacancy

7. Whenever the office of a member becomes vacant before the expiry of the term of office, the Minister may appoint another member in place of the member who vacates office but that member shall hold office only for the unexpired part of the term.

Filling of casual vacancy

8. (1) Subject to the other provisions of this Act, the Agency may regulate its own procedure.

(2) The Agency shall meet for the transaction of business at least once every three months at such places and times as the Chairperson may determine.

(3) The Chairperson may, upon giving notice of not less than fourteen days, call a meeting of the Agency and shall call a special meeting to be held within fourteen days of receipt of a written request to the Chairperson by at least five members of the Agency.

(4) If the urgency of any particular matter does not permit the giving of such notice as is required under subsection (3), a special meeting may be called by the Chairperson, upon giving a shorter notice.

Proceedings of Agency

(5) Nine members of the Agency, other than the *ex-officio* members, shall form a quorum at any meeting of the Agency.

(6) There shall preside at any meeting of the Agency-

(a) the Chairperson;

(b) in the absence of the Chairperson the Vice-Chairperson; or

(c) in the absence of the Chairperson and the Vice-Chairperson

such member as the members present may elect for the purpose of that meeting.

(7) A decision of the Agency on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to the deliberative vote.

(8) The Agency may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Agency but such person shall have no vote.

(9) The validity of any proceedings, act or decision of the Agency shall not be affected by any vacancy in the membership of the Agency or by any defect in the appointment of any member or by reason that any person not entitled to do so took part in the proceedings.

9. (1) The Agency may, for the purpose of performing its functions under this Act, constitute such committees as it considers necessary and may delegate to any committee such of its functions, as it considers fit.

Committees of Agency

(2) The Agency may appoint as members of a committee, persons who are, or are not, members of the Agency, except that at least one member of a committee shall be a member of the Agency.

(3) A person serving as a member of a committee shall hold office for such period as the Agency may determine.

(4) Subject to any specific or general direction of the Agency, a committee may regulate its own procedure.

10. The members of the Agency or any committee shall be paid such allowances as the Agency may, with the approval of the Minister, determine.

Allowances of members

11. (1) If a member or person is present at a meeting of the Agency or any committee of the Agency at which any matter is the subject of consideration and in which matter the member or person or the member or person's spouse is directly or indirectly interested in a private capacity, the member or person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Agency or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter.

Disclosure of interest

(2) A declaration of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

12. (1) A person shall not, without the consent in writing given by, or on behalf of, the Agency, publish or disclose to any person otherwise than in the course of duties, the contents of any document, communication, or information which relates to, and which has come to the person's knowledge in the course of the person's duties under this Act.

Prohibition of Publication or disclosure of information to unauthorised person

(2) Any person who knowingly contravenes the provisions of subsection (1) commits an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a period not exceeding three months, or to both.

13. (1) The seal of the Agency shall be such device as may be determined by the Agency and shall be kept by the Secretary.

Seal of Agency

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Secretary or any other person authorised in that behalf by a resolution of the Agency.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Agency by the Secretary or any other person generally or specifically authorised by the Agency in that behalf.

(4) Any document purporting to be a document under the seal of the Agency or issued on behalf of the Agency shall be received in

evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved

PART III**MANAGEMENT AND STAFF**

14. (1) The Agency shall, with the approval of the Minister, appoint a Director who shall be the chief executive officer of the Agency and, subject to the control of the Agency, be responsible for the day to day administration of the Agency.

Director

(2) The Agency shall, with the approval of the Minister, determine the terms and conditions of service of the Director.

(3) The Director shall attend meetings of the Agency and may attend meetings of any committee of the Agency and may address the meetings, but shall have no vote.

15. (1) The Director shall be the Secretary to the Agency.

**Secretary and
Other Staff**

(2) The Agency may appoint such other staff of the Agency as it considers necessary for the performance of its functions under this Act.

(3) The Agency shall determine the terms and conditions of service of the staff of the Agency.

PART IV**THE NATIONAL ROAD FUND**

16. (1) There is hereby established the National Road Fund.

**Establishment
of Road Fund**

(2) The Road Fund shall consist of-

(a) such moneys as may be appropriated by Parliament for the purposes of the Road Fund;

(b) all fuel levy collected, less the cost of collection which shall not exceed three per cent, in every fiscal year".

(c) such percentage of licence fees, registration fees and international transit fees payable to the Road Transport and Safety Agency under the Road Traffic Act, as the Minister may determine;

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2002**

(d) such percentage of road user levies including tariffs, taxes and tolls as may be determined by the Minister on the recommendation of the agency in consultation with Road Development Agency; and

(e) such monies as may be paid to the Road Fund by way of loans, grants or donations.

17. The Agency shall apply the moneys of the Road Fund-

**Application of
moneys of Road
Fund**

(a) in the construction, maintenance and care of public roads;
and

(b) in road transport, traffic and safety management.

PART V**FINANCIAL PROVISIONS**

18. (1) The funds of the Agency shall consist of such moneys as may-

- (a) be appropriated to the Agency by Parliament for the purposes of the Agency;
- (b) with the approval of the Minister, be allocated to the Agency from the Road Fund;
- (c) be paid to the Agency by way of loans, grants or donations;
- and
- (d) vest in or accrue to the Agency.

(2) The Agency may-

- (a) accept moneys by way of grants or donations from any source in Zambia and subject to the approval of the Minister, from any source outside Zambia; and
- (b) subject to the approval of the Minister raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions.

(3) there shall be paid from the funds of the Agency-

- (a) salaries, allowances, loans, gratuities and pensions of staff of the Agency and other payments for the recruitment and retention of staff;
- (b) such reasonable travelling and subsistence allowances for members and members of any committee of the Agency when engaged in the business of the Agency and at such rates as the Agency may, with the approval of the Minister, determine; and
- (c) any other expenses incurred by the Agency in the performance of its functions.

(4) The Agency may with the approval of the Minister invest in such manner as it thinks fit such of its funds as it does not immediately require for the discharge of its functions.

19. The financial year of the Agency shall be the period of twelve months ending on 31 December of each year.

20. (1) The Agency shall cause to be kept proper books of account and other records relating to its accounts.

(2) The accounts of the Agency, shall be audited annually by independent auditors appointed by the Agency subject to the approval of the Minister.

(3) The auditor's fees shall be paid by the Agency.

21. (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Agency shall submit to the Minister a report concerning its activities during the financial year.

Funds of Agency

Financial Year

Accounts

Annual Report

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Agency and there shall be appended to the report-

- (a) an audited balance sheet;
- (b) an audited statement of the income and expenditure;

(c) an audited statement of income and expenditure of the National Road Fund; and

(d) such other information as the Minister may require.

(3) The Minister shall not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (10) lay the report before the National Assembly

22. The Minister may, by statutory instrument, make regulations for the better carrying out of the purposes of this Act.

Regulations

23. The National Roads Board constituted pursuant to section *fifty-five* of the Roads and Road Traffic Act shall stand dissolved on the appointed date.

**Dissolution of
National Roads
Board Cap. 464**

24. (1) On or after the appointed date, there shall be transferred to, and vest in, or subsist against, the Agency by virtue of this Act and without further assurance-

**Vesting of assets
of National
Roads Board**

(a) the affairs of the National Roads Board and

(b) subject to this Act, all property, rights and obligations which immediately before the appointed date were the property, rights and obligations of the National Roads Board.

(2) Except as provided in this Act, every deed, bond and agreement (other than an agreement for personal service) to which the Government was a party immediately before the appointed date in respect of the National Roads Board, whether in writing or not, and whether or not of such a nature that rights, liabilities and obligations thereunder could be assigned, shall, unless its subject-matter or terms make it impossible that it should have effect as modified in the manner provided by this subsection, have effect as from the date of the assignment thereof, as if-

(a) the Agency had been a party thereto;

(b) for any reference to the Government there were substituted, as respects anything falling to be done on or after the appointed date, a reference to Agency; and

(c) for any reference to any officer of the National Roads Board not being a party thereto and beneficially interested therein there were substituted, as respects anything falling to be done on or after the appointed date, or reference to such officer of the Agency as the Agency shall designate.

(3) Subject to the provisions of subsection (2), documents, other than those referred to therein, which refer specifically or generally to the National Roads Board shall be construed in accordance with subsection (2) as far as applicable.

25. (1) Where under this Act, any property, rights, liabilities and obligations of the Government through the National Roads Board are deemed transferred to the Agency in respect of which transfer a written law provides for registration, the

**Registration of
property to be
transferred by**

Agency shall make an application in writing to the appropriate authority for registration of the transfer. **Government**

(2) The registration authority referred to in subsection (1) shall make such entries in the appropriate register as shall give effect to such transfer and, where applicable, issue to the transferee concerned a certificate of title in respect of the property or make necessary amendments to the register, as the case may be, and shall make endorsement on the deeds relating to the title, right or obligation concerned; and no registration fees, stamp duty or other duties shall be payable in respect thereof.

26. (1) Without prejudice to the other provisions of this Act, where any right, liability or obligation vests in the Agency by virtue of this Act, the Agency and all other persons shall, as from the appointed date, have the same rights, powers and remedies (and in particular the same rights as to the instituting or defending of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Agency. **Legal proceedings**

(2) Any legal proceedings or application of any authority pending immediately before the appointed date by or against the Government in respect of the National Roads Board may be continued by or against the agency.

(3) After the appointed date, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the government in respect of the National Roads Board may be instituted by or against the Agency.

27. (1) On or after the appointed date, the Agency shall on such terms and conditions as it may, with the approval of the minister, determine appoint as officers of the Agency such public officers from the National Roads Board as may be necessary for the performance of the functions of the Agency. **Terms of services of employees of Board**

(2) Where an officer from the Public Service is appointed to the service of the Agency-

(a) the terms and conditions of service with the Agency shall not be less favourable than those the officer enjoyed in the Public Service; and **Act No. 35 of 1996**

(b) the officer shall be deemed to have retired under section thirty-nine of the Public Service Pensions Act.

(3) On or after the appointed date employees of the National Roads Board who are not engaged by the Agency under subsection (2) shall be retained by the Government and shall--- **Act No. 35 of 1996**

(a) be redeployed in the service of the Government; or

(b) be retired under section thirty-nine of the Public Service Pension Act.

