

RTMC Private Investment/Sector

Road Traffic Management Corporation Act 20 of 1999 :

PREAMBLE

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.

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;

Objectives of Act

2 (d) to phase out, where appropriate, public funding and phase in **private sector** investment in road traffic on a competitive basis;

Appointment of and delegation to board

8 (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.

Governance agreement with board section

9 (1) (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;

Business and financial plan section

14 (1) (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;

14 (9) Failure by the Corporation to comply with any provision of the business and financial plan does not affect the validity or enforceability of any agreement, right, obligation or liability entered into, acquired or incurred by the Corporation.

Functions of chief executive officer

29. The chief executive officer of the Corporation must, subject to the performance contract contemplated in section 15(4)

- (f) facilitate **private sector** investment by—
 - (i) undertaking feasibility and investment studies to ascertain technical, 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
 - (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;
 - (iv) Organizing 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 facilitator 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;
 - (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;

CHAPTER 5 : PRIVATE INVESTMENT IN ROAD TRAFFIC

Private investment

34. For the purpose of restructuring the affairs of the Corporation, the chief executive officer may, subject to the approval of the Shareholders Committee and the Minister of Finance—

- (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;
- (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

- (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).

(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
- (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.

(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.

(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—

- (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.

(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—

- (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.

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.

(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%.

(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).

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;

(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;

(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
- (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;

(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 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;

(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

(g) a contract to rehabilitate-operate-and-transfer means a contract whereby an existing road traffic facility is—

- (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.

(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—

- (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;
- (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—

- (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
- (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;
 - (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;
 - (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—

- (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
 - (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.

(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.

(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.

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—

- (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.

(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.

(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—

- (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;

(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.

(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.

(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.