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LEGAL NOTICE NO. 72 OF 2005

FINANCE (ROAD FUND) REGULATIONS 2005

In exercise of the powers conferred on me by section 18A of the Finance Order 1988¹, I,

DR. TIMOTHY THAHANE THAHANE

Minister of Finance and Development Planning make the following regulations:

PART I – PRELIMINARY**Citation and commencement**

1. These regulations may be cited as the Finance (Road Fund) Regulations 2005 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. In these regulations, unless the context otherwise requires-

“**appointed member**” means a member of the Board appointed by the Minister under regulation 8;

“**Board**” means the Board of Directors of the Fund established under regulation 8;

“**Executive Secretary**” means the Executive Secretary to the Road Fund Board appointed under regulation 14;

“**Fund**” means the Road Fund established by the Finance (Road Fund) Notice 1995²;

“**Minister**” means Minister responsible for finance;

“**Secretariat**” means the Secretariat of the Fund established under regulation 15.

PART II – THE FUND

Purpose of the Fund

3. (1) The purpose of the Fund is to finance the following:
 - (a) routine and periodic maintenance of all roads in Lesotho;
 - (b) on a cost share basis, urban community roads and rural community roads;
 - (c) road rehabilitation, road upgrading, new road works and road safety projects; and
 - (d) any other project or matter connected with roads.
- (2) The road works programmes shall be identified and prioritized by the Ministries responsible for construction and maintenance of roads.

Receipts into the Fund

4. (1) There shall be paid into the Fund:
 - (a) road toll-gate fees;
 - (b) all cross border fees and levies;
 - (c) license fees on motor vehicles;
 - (d) short-term permits and special permits for motor vehicle;
 - (e) road maintenance levy on petrol and diesel;
 - (f) fines on overloaded vehicles;
 - (g) any other road user charges including fines on road traffic offences; and

- (h) any sums appropriated to the Fund including donor funding.
- (2) The Board shall take such steps as are necessary to ensure that funds payable to the Fund are collected and deposited into the Fund account.

Disbursements from the Fund

5. Moneys shall be paid from the Fund for-
- (a) the purpose of financing routine and periodic maintenance of roads;
 - (b) its administrative costs; and
 - (c) financing road rehabilitation, road upgrading, new road works and road safety projects.

PART III – ADMINISTRATION AND MANAGEMENT OF THE FUND

Administration of the Fund

6. The Fund shall be administered and managed by the Board which shall report to the Minister.

Functions of the Minister

7. (1) The Minister shall appoint the Board and shall cause the names of Board members to be published in the gazette.
- (2) The Minister may give the Board directions in writing as to the performance of its functions and the Board shall give effect to the directions.
- (3) The Minister shall—
- (a) review and approve adjustments to all sources of revenue as set out under regulation 4; and

- (b) approve and facilitate appropriations from the Consolidated Fund on the advice of the Board.

Continuation and composition of the Board

- 8. (1) There shall continue in existence a Board of Directors of the Fund comprising:
 - (a) the Chairman;
 - (b) the Deputy Chairman;
 - (c) the Executive Secretary;
 - (d) three ex-officio members, as set out in Schedule 1, who shall not be officers holding offices below the level of Director or equivalent;
 - (e) four non-governmental members as set out in Schedule 2.
- (2) The Chairman of the Board and the Deputy Chairman shall be appointed from amongst members of the Board by the Minister.
- (3) Other members of the Board shall be nominated by the respective stakeholders listed under Schedule 2.

Tenure of office

- 9. (1) An appointed member –
 - (a) shall hold office for a period of three years from the date of appointment unless the officer resigns or vacates office under sub-regulation (3);
 - (b) may be re-appointed once at the conclusion of his or her term of office.

- (2) An appointed member may resign by writing under his or her hand addressed to the Minister.
- (3) An appointed member shall vacate his or her office if –
 - (a) he or she has been absent for three meetings of the Board within a period of a year;
 - (b) he or she is in contravention of the Code of Conduct referred to in regulation 21;
 - (c) he or she is unable or unfit to discharge the functions of a member of the Board; and
 - (d) he or she fails to comply with sub-regulation 12 (1).
- (4) Where an appointed member has resigned under sub-regulation (2) or has vacated his or her office or has been terminated from the office, the Minister shall fill that vacancy with a new appointment in accordance with regulation 8 and the person so appointed shall hold office for the unexpired term of his or her predecessor.
- (5) The Minister shall, three months before the term of office expires, advise the respective stakeholders represented on the Board to nominate members for the following term of office.

Functions of the Board

10. (1) The functions of the Board are to -
 - (a) formulate policies for the proper management of the Fund;
 - (b) approve procedures and processes for collecting road user charges with due regard to efficiency and cost effectiveness;

- (c) institute procedures to ensure that funds payable to the Fund are collected and deposited into the Fund Account in a timely manner;
- (d) establish procedures to be followed in the preparation of the Annual Roads Programmes by the various road agencies for approval by the Board;
- (e) review and approve the Annual Roads Programmes at least six months before the national budget is approved;
- (f) allocate, annually, the resources of the Fund to the Secretariat according to its approved budget and to various implementing agencies in accordance with the approved Annual Roads Programmes;
- (g) recommend to the Minister any changes in the level of the Fund sources of revenue as set out under regulation 4;
- (h) review and approve the allocation of funds for maintenance of roads and road safety related activities and recommend to the Minister the level of funding required to finance the recommended Annual Roads Programmes;
- (i) formulate policies and establish procedures for disbursing funds for the Annual Roads Programmes;
- (j) ensure transparency and accountability in the disbursement of funds;
- (k) recommend the approved Annual Roads Programmes to the Minister;
- (l) undertakes technical audit of Road works; and
- (m) prepare and publish Annual Reports.

- (2) The Board may appoint study groups or committees as may be necessary for the proper discharge of the functions of the Board consisting of some members of the Board and other persons with appropriate qualifications, and define the objectives of the groups or committees.

Meetings of the Board

11. (1) The Board shall meet at least once a month for regular Board meetings at offices of the Fund.
- (2) The Chairman shall, at the written request of not less than four members of the Board, convene a special meeting of the Board to transact any extraordinary business on a date specified in the request. Members of the board shall be notified of the meeting at least three days prior to the date of the meeting.
- (3) The Chairman shall preside at a meeting of the Board and if the Chairman is absent, the Deputy shall chair the meeting.
- (4) The quorum at a meeting of the Board shall be made up of five members.
- (5) The Board decisions shall be taken by the majority vote, and when the votes are equal the Chairman has a casting vote, with dissenting members having the right to have their views recorded in the minutes.
- (6) The minutes of a meeting of the Board shall be recorded in a register by the Secretary and signed by the Chairman of the meeting and the Secretary.
- (7) The Board may co-opt other persons at any of its meetings to advise the Board during its deliberations, but such persons shall not vote.

- (8) Subject to this regulation, the Board shall formulate and regulate its own procedures.

Disclosure of interest

12. (1) If a member of the Board acquires any pecuniary interest, direct or indirect, in a proposed or ongoing contract or in any other matter in which private interests conflict with the duties as a member and which is the subject of consideration by the Board, he or she shall, as soon as he or she is aware of the interest in the contract or proposed contract or any other matter, disclose such facts to the Board and shall excuse himself or herself when the issue relating to the matter he or she has interest in, is discussed.
- (2) Failure to comply with sub-regulation (1), due to intentional non-disclosure by a member of the Board shall constitute contravention of the Code of Conduct which shall result in termination of membership as prescribed under regulation 9(3)(b).

Remunerations and reimbursement of expenses

13. (1) A member of the Board shall be remunerated for Board meetings that he or she attends, at a rate to be determined by the Board and approved by the Minister.
- (2) A member of the Board and a non-voting person co-opted or appointed to a sub committee under regulations 10 (2) and 11(7) shall -
- (a) be paid such honorarium as may be determined by the Board and approved by the Minister;
- (b) be reimbursed expenses incurred in carrying out their duties under these regulations.

The Executive Secretary

14. (1) The Minister shall, on the advice of the Board, appoint a person, following a competitive and transparent selection

process by the Board, to be the Executive Secretary of the Board.

- (2) The Executive Secretary shall be the Chief Executive Officer as well as Chief Accounting Officer of the Fund.
- (3) The Executive Secretary shall perform such duties as are conferred on him or her under these regulations or by the Board.
- (4) The Executive Secretary may co-opt a senior member of the Secretariat staff as Secretary to take minutes of Board meetings.

The Secretariat

15. (1) There shall be a Secretariat of the Fund which shall be headed by the Executive Secretary who shall be assisted by persons qualified in personnel administration, accounting or financial management and civil engineering disciplines.
- (2) The staff of the Secretariat shall be appointed in accordance with approved Secretariat Procedures Manual made by the Board and approved by the Minister.

Secretariat employees' benefits

16. (1) The Fund may grant pensions, gratuities or retiring benefits and such allowances as may be determined by the Board to the employees of the Secretariat and may require them to contribute to any pension, provident fund, superannuation scheme or any other similar schemes.
- (2) If an officer holding a pensionable office in the public service is seconded to the Secretariat, the period during which he or she serves with the Secretariat shall, for the purpose of computation of time and amount of pension payable to him or her in respect of his or her service as a public officer, be deemed to be service in a pensionable office.

Functions of the Secretariat

17. (1) The Secretariat shall be responsible for the management and administration of the Fund in accordance with the decisions of the Board.
- (2) Without prejudice to the generality of sub-regulation (1), the Secretariat shall -
- (a) keep proper accounts and records in respect of the Fund;
 - (b) maintain bank accounts in which shall be recorded all receipts into the Fund and all disbursements from the Fund;
 - (c) prepare and submit for audit in respect of each financial year a balance sheet, statement of income and expenditure, and statement of cash flow in accordance with generally accepted accounting standards and practices;
 - (d) prepare and publish an annual report in the form and content to be prescribed by the Board;
 - (e) arrange the business for meetings of the Board;
 - (f) establish the form and content, coordinate, review and recommend to the Board an appropriate, integrated and coordinated approach to planning and formulation of the Annual Roads Programmes;
 - (g) implement and update the Fund "Procedures for Preparation and Approval of Annual Roads Programmes";
 - (h) implement and update the Fund "Procurement Guidelines" and "Reporting Formats";

- (i) implement and update the Fund "Allocation Criteria" for apportioning and disbursing funds amongst various implementing agencies;
- (j) review tender documents for consultants and contractors, and ensure compliance with relevant procurement guidelines of the Fund and those applicable in Lesotho;
- (k) monitor contract works for compliance with design standards, specifications and conditions of contract (technical audits and contracts management);
- (l) check and advise on payment of consultants' and contractors' certificates;
- (m) scrutinize progress reports submitted by implementing agencies for compliance with Road Fund "Reporting Formats" and correctness of the information provided;
- (n) provide the Board with such information as may be required by the Board; and
- (o) carry out any other functions assigned to it by the Board.

PART IV – MISCELLANEOUS

Annual Roads Programmes

18. The implementing agencies responsible for maintaining the roads network funded by the Fund shall, in consultation with the Secretariat, prepare Annual Roads Programmes which shall be in such form and containing such details as may be prescribed by the Board, and the programmes shall be approved in accordance with sub-regulation 10 (e) and (h).

Annual report and accounts

19. (1) The Board shall, within a period of three months after the end of the financial year, submit the following documents to the Minister:
- (a) a report on the activities of the Fund during the preceding financial year;
 - (b) an income statement for the preceding financial year; and
 - (c) a balance sheet showing the assets and liabilities of the Fund at the close of the financial year.
- (2) The Minister shall submit a copy of the annual report and audited accounts of the Fund to the Cabinet at the earliest opportunity.

Audit of accounts

20. (1) The accounts of the Fund shall be audited by the Auditor General or any officer authorised by him or her.
- (2) The accounts shall be submitted to the Auditor General within three months of end of financial year.
- (3) The Auditor General shall complete his or her audit of the Fund's accounts for the previous financial year within three months after submission of accounts.
- (4) The report referred to in regulation 19 shall include assessment relating to the achievement of the objectives of the Fund, compliance with the policies, procedures and criteria established by the Board, and the effectiveness of the administration of the Fund.

Code of Conduct

21. The Minister shall issue a Code of Conduct for the Board and the Secretariat.

Taxation

22. The Fund may, subject to the laws governing taxes, apply for exemption from taxation in respect of certain transactions.

Repeal

23. The Finance (Road Fund) Regulations 1996 are repealed.

DR. TIMOTHY THAHANE THAHANE
MINISTER OF FINANCE AND DEVELOPMENT PLANNING

NOTE

¹ Order No. 6 of 1988

² Legal Notice No. 179 of 1995

SCHEDULE 1

Ex-officio members of the Board (reg 8(1)(c))

1. One representative of the Ministry responsible for finance and for development planning.
2. One representative of the Ministry responsible for construction and Maintenance of roads.
3. One representative of the Ministry responsible for energy.

SCHEDULE 2

Non- government Members of the Board (reg 8(1)(d))

1. One person selected from Passenger Transport
2. One person selected from Freight Transport
3. One person selected from the Engineering Fraternity
4. One person selected from the Law Society of Lesotho.