



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$3.54

WINDHOEK - 2 March 1998

No. 1803

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Proclamation

by the

PRESIDENT OF THE REPUBLIC OF NAMIBIA

No. 6

1998

ANNOUNCEMENT OF THE ACCESSION TO AND PUBLICATION OF THE MEMORANDUM OF UNDERSTANDING ON ROAD TRANSPORTATION IN THE SOUTHERN AFRICA CUSTOMS UNION BY THE REPUBLIC OF NAMIBIA

Under Article 32(8) of the Namibian Constitution I hereby announce that the Memorandum of Understanding (MOU) on Road Transportation in the Southern Africa Customs Union was acceded to by the Republic of Namibia in Malawi on 26 January 1995, and ratified by the National Assembly under Article 63(2)(e) of the Constitution on 2 October 1997.

In terms of section 2 of the Cross-border Road Transportation Act, 1996 (Act No. 18 of 1996) provisions of the said Memorandum of Understanding on Road Transportation in the Southern Africa Customs Union are published in the Schedule to this Proclamation.

Given under my Hand and the Seal of the Republic of Namibia at Windhoek, this 10th day of November, One Thousand Nine Hundred and Ninety seven.

SAM NUJOMA

President

BY ORDER OF THE PRESIDENT-IN-CABINET

**MEMORANDUM OF UNDERSTANDING ON ROAD
TRANSPORTATION IN THE COMMON CUSTOMS AREA
PURSUANT TO THE CUSTOMS UNION AGREEMENT BETWEEN
THE GOVERNMENTS OF BOTSWANA, LESOTHO, SOUTH AFRICA
AND SWAZILAND**

With reference to the Customs Union Agreement 1969 and in particular Article 15 thereof, the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of South Africa and the Kingdom of Swaziland (hereinafter referred to as the 'Contracting Parties') being desirous of facilitating and maintaining effective road transportation arrangements, and in particular, equitable shares in road transportation between their countries;

Have agreed as follows:

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ARTICLE 1 DEFINITIONS

In this Memorandum of Understanding, unless inconsistent with the context -

- (a) **“carrier”** means, respectively, any inhabitant of Botswana, Lesotho, South African or Swaziland or any legal person registered in Botswana, Lesotho, South Africa or Swaziland to engage in the conveyance of passengers or carriage of goods by road for hire or reward or in course of his industry, trade or business by means of vehicles registered in Botswana, Lesotho, South Africa or Swaziland as the case may be;
- (b) **“competent authority”** means:
 - (i) for Botswana, the Director of Transport, Gaborone;
 - (ii) for Lesotho, the Road Transport Board, Maseru;
 - (iii) for South Africa, the National Transport Commission, Pretoria;
 - (iv) for Swaziland, the Road Transportation Board, Mbabane; or
 - (v) any other body designated for that purpose by the respective Contracting Party;
- (c) **“International circular tour”** means:
 - (i) any occasional conveyance of a group of passengers by road for reward or by means of a hired vehicle, from a place of departure in the territory of one Contracting Party, into the territory of another Contracting Party and back to such place of departure by means of the same vehicle without any member of such group of passengers being picked up or set down, except in case of emergency during the journey through the territory of such other Contracting Party; or

- (ii) the conveyance of a group of passengers by road for reward or by means of a hired vehicle, from a place of departure in the territory of one Contracting Party to one or more holiday resorts or places of tourist interest in the territory of another Contracting Party where they will stay, and the return conveyance of the same group by the same vehicle after the completion of their stay;
- (d) **“International transit tour”** means any occasional conveyance of a group of passengers by road for reward or by means of a hired vehicle:
 - (i) from the territory of one Contracting Party through the territory of another Contracting Party en route to a third country; or
 - (ii) from a third country through the territory of one Contracting Party to the territory of another Contracting Party; or
 - (iii) between the territories of the Contracting Parties;by means of the same vehicle without any member of such group being picked up or set down, except in cases of emergency, during the journey through the territory of the Contracting Party whose territory is so traversed;
- (e) **“occasional international passenger service”** means the ad hoc conveyance of passengers by road by means of hired vehicle from a point in the territory of one Contracting Party to a point in the territory of another Contracting Party, or between the territories of the Contracting Parties through the territory of a third Contracting Party;
- (f) **“scheduled international passenger service”** means the regular conveyance of passengers by road for reward or by means of a hired vehicle by a prescribed route in accordance with predetermined timetables and tariffs, as approved by the relevant competent authority of the Contracting Party in whose territory the conveyance is undertaken, from a point in the territory of one Contracting Party to a point in the territory of another Contracting Party, and back from a point in the territory of the latter Contracting Party to a point in the territory of the former Contracting Party;
- (g) **“Transport Liaison Committee”** means the Transport Liaison Committee of the Southern African Customs Union Commission;
- (h) **“vehicle”** means,
 - (i) in relation to passengers, any mechanically propelled road vehicle which:
 - (aa) is constructed or adapted for, and used on the roads for the conveyance of passengers;
 - (bb) has at least nine seats in addition to that of the driver; and

- (cc) is registered in the territory of one Contracting Party and owned and operated by or on behalf of any carrier authorised in that territory to convey passengers and is temporarily imported into the territory of another Contracting Party for the purpose of the international conveyance of passengers to, from or in transit through that territory; and
- (ii) in relation to goods, any mechanically propelled road vehicle or trailer or semi-trailer which is:
 - (aa) constructed or adapted for, and used on the roads for the carriage of goods; and
 - (bb) registered in the territory of one Contracting Party and is temporarily imported into the territory of another Contracting Party for the purpose of the international carriage of goods for delivery at or collection from any point in or in transit through the latter territory.

ARTICLE II OBJECTIVES

1. The objectives of the Contracting Parties are:
 - (a) to regulate the carriage of goods and the conveyance of passengers by road for reward, or in the course of a carrier's own industry or trade, between or across the territories of the Contracting Parties, in such a manner as to ultimately achieve an equal distribution of traffic among the carriers of the Contracting Parties;
 - (b) to achieve an equal distribution of permits by January 1992; and
 - (c) to achieve and maintain an equitable non-discriminatory infrastructure cost recovery system which shall not inhibit the operation of this Memorandum of Understanding.
2. The competent authorities shall monitor the progress towards achieving these objectives.
3. At regular intervals to be specified by the Transport Liaison Committee, or at the request of the competent authority of any Contracting Party, the competent authorities of the other Contracting Parties shall provide all relevant information available concerning the manner in which traffic covered by this Memorandum of Understanding has developed.
4. At regular intervals, or at the request of any representatives of a Contracting Party, the Transport Liaison Committee shall meet at a mutually convenient time and venue to review the operation of this Memorandum of Understanding.

ARTICLE III
PERMITS

1. A permit shall be required for the carriage of goods or the conveyance of passengers under this Memorandum of Understanding except as otherwise provided for at Article VIII.
2. The Transport Liaison Committee shall agree on the quota for journeys and or permits, under this Memorandum of Understanding for carriers in their respective territories.
3.
 - (a) If, during a period for which a quota has been agreed under subarticle 2, the competent authority of one Contracting Party foresees that there would be a shortage of any type of permit for its carriers that competent authority may apply to the competent authority of the other Contracting Party with a request for the transfer of the authority to issue the relevant permits for the quota without any erosion of the quota of the transferring party;
 - (b) the Contracting Parties agree that they will accede to such requests if possible; and
 - (c) any dispute arising under this subarticle shall be resolved by the Transport Liaison Committee.
4. The following permits may be issued:
 - (a) single journey permits valid for one journey outward and return within a period of six months; and
 - (b) multiple journey permits valid for a specified number of journeys, outward and return, within a period of twelve months.

Provided that all permits shall expire on a date to be determined by the Transport Liaison Committee.

5. The Transport Liaison Committee may decide that the types of journeys described in subarticle 1(a) and subarticle 1(b) of Article IV shall require different types of permits.
6. Permits issued under this Memorandum of Understanding shall be as set out at Annexure 'B'.
7. A permit shall be issued by the applicant's competent authority if that competent authority is satisfied that the applicant has the means and ability to provide the carriage or conveyance for which the permit is sought.
8. Each competent authority shall collect a fee payable in respect of the issuing of a permit to recover:

- (a) its administrative costs; and
- (b) infrastructure costs

and thereafter within a period and in a manner agreed between the Contracting Parties over which the conveyance or carriage authorised by the permit is undertaken, reimburse the other Contracting Parties for infrastructure costs incurred by them:

9. A permit shall be valid for the use of one vehicle, or a combination of vehicles, articulated vehicle or road train at any one time.
10. A permit shall be used only by the authorised carrier to whom it is issued and shall not be transferable.
11. Each competent authority shall keep a register of permits issued under this Memorandum of Understanding containing the information set out at Annexure 'C'.

ARTICLE IV **GOODS TRANSPORT**

1. A carrier of one Contracting Party may import either an empty or a laden vehicle temporarily into the territory of another Contracting Party for the purpose of carrying goods including return loads:
 - (a) between any point in the territory of one Contracting Party and any point in the territory of another Contracting Party; and
 - (b) in transit across the territory of a Contracting Party.
2. Except as provided in Article VIII, the competent authority of each Contracting Party shall issue permits to carriers authorised in its territory to engage in the carriage of goods referred to in subarticle 1.
3. A carrier of one Contracting Party shall not carry goods between two points in the territory of another Contracting Party.
4. A carrier of one Contracting Party shall not carry goods between the territory of another Contracting Party and a third country unless the vehicle transits the country in which it is registered.
5. A consignment note is required for the carriage of goods under this Memorandum of Understanding.
6. A permit under this Memorandum of Understanding shall not entitle a carrier to carry arms and ammunition, military equipment and explosives unless a special permit is obtained from the appropriate authority.

ARTICLE V
PASSENGER TRANSPORT

1. A carrier shall apply for a permit for a scheduled international passenger service to its competent authority and such application shall contain all particulars as may be determined by the competent authority.
2. The competent authority issuing a permit for a scheduled international passenger service shall formulate the conditions of issue of the permit, namely its validity period, the routes, the services frequencies, stopping points, timetables, tariffs and other details necessary for the smooth and efficient operation of scheduled international passenger services, in consultation with the other competent authorities.
3. In the case of approval of an application for a permit in terms of subarticle (5), the competent authority shall, for record purposes, forward information pertaining to the permit to the competent authority of the other Contracting Party.
4. A passenger list shall be required for the conveyance of passengers on international circular tours and international transit tours.
5. International circular tours, international transit tours and occasional international passenger services shall not be subject to a quota, although a permit shall be required for their operation.
6. Permits for international circular tours, international transit tours and occasional international passenger services shall be issued by the competent authority of the Contracting Party in which the passengers originate, and shall be valid in the territories of all the Contracting Parties, for a period to be determined by the issuing competent authority.

ARTICLE VI
OTHER PROVISIONS

1. The provisions of this Memorandum of Understanding shall not derogate from the application of the provisions of national laws and regulations imposing any restrictions and controls on grounds of public health, road traffic, veterinary or phytopathological reasons or the levying of dues chargeable by virtue of such laws and regulations of the Contracting Party.
2. In the case of contravention of this Memorandum of Understanding by a carrier the competent authority of the Contracting Party where the permit was issued shall, if requested by the competent authority of the Contracting Party in whose territory the contravention took place, take one of the following steps, depending on the gravity or the frequency of the contravention:

- (a) issue a written warning with an intimation that the permit may be suspended or revoked, or that the carrier may be barred from getting additional permits; or
 - (b) suspend or revoke the permit issued according to this Memorandum of Understanding; or
 - (c) bar the carrier from getting additional permits, either for a stated period or permanently.
3. The competent authority of the Contracting Party in whose territory the contravention took place shall be informed of the measures taken in terms of subarticle 2.
4. All vehicles used in international transport pursuant to this Memorandum of Understanding shall be suitable and roadworthy for the transport operations for which they are licensed.
5. Registration and licensing of vehicles in the territory of one Contracting Party shall be valid for operations in the territories of the other Contracting Parties without any other requirement or formalities.
6. The original permit, consignment note or passenger list referred to in Articles III, IV and V shall be kept in the vehicle on every journey in the territory of a Contracting Party and shall be produced for inspection when required by any officer designated by the competent authority.
7. Weighing certificates from checking points in the territory of one Contracting Party shall be valid in the territories of the other Contracting Parties. This shall not, however, prevent the weighing and checking of the load by the competent inspection authorities at any time.
8. Certificates of road-worthiness or fitness issued in the territory of one Contracting Party shall be valid in the territories of the other Contracting Parties. This shall not, however, prevent the checking of a vehicle's road-worthiness or fitness by the competent inspection authorities at any time.
9. The Contracting Parties shall endeavour to harmonize vehicle standards.

ARTICLE VII **IMPLEMENTATION**

1. The Transport Liaison Committee shall ensure the satisfactory implementation of this Memorandum of Understanding and its adaption to development in traffic.
2. Any dispute arising from this Memorandum of Understanding shall be settled in a manner contemplated by Article 20 of the Customs Union Agreement.

ARTICLE VIII
EXEMPTIONS

No permit shall be required for -

- (a) goods carriage in a vehicle the permitted maximum gross weight of which does not exceed 3.5 tonnes;
- (b) household removals in specialised vehicles;
- (c) removal of household items by the householder or by an agent of the household without charging any fee;
- (d) funeral transport, conveyance of wedding parties, cultural groups, religious worshippers, and sport groups;
- (e) the carriage of equipment, accessories and animals to or from theatrical or cinematographic events, circuses, and fairs, and of radio-recording, cinematographic or television equipment;
- (f) the carriage of curios and works of art for exhibition;
- (g) the carriage of mail;
- (h) movement of unladen vehicles;
- (i) movement of breakdown vehicles, or vehicles intended to replace a vehicle that has broken down, or of vehicles carrying requisites for the repair of another vehicle; and
- (j) carriage of goods, not specified above as may be agreed by the competent authorities.

ARTICLE IX
FINAL PROVISIONS

1. Each Contracting Party shall, as soon as possible, notify the other in writing through diplomatic channels that it has complied with the formalities for the entry into force of this Memorandum of Understanding, which shall take effect thirty days from the date of the last notification. However, two Contracting Parties may, by Exchange of Notes decide that as between them the Memorandum of Understanding shall take effect thirty days after the second of their notifications.
2. This Memorandum of Understanding may be amended by agreement between the Contracting Parties.
3. The Annexures to this Memorandum of Understanding may be amended by the Transport Liaison Committee.

4. If a Contracting Party wishes to withdraw from this Memorandum of Understanding that Contracting Party shall give notice thereof to all other Contracting Parties. If after consultation the Contracting Parties fail to agree on the date and conditions of withdrawal, this Memorandum of Understanding shall remain in force until six months from the date of such notice and shall then cease to apply to the withdrawing Contracting Party.
5. The law of each Contracting Party shall within its territory apply in respect of all matters not regulated by this Memorandum of Understanding.

DONE at KASANE this 4th day of SEPTEMBER 1990.

C.J. BUTALE
FOR THE GOVERNMENT OF
THE REPUBLIC OF BOTSWANA

M. MOKONO
FOR THE GOVERNMENT OF
THE KINGDOM OF LESOTHO

G. BARTLETT
FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA

W.F.C. MKHONZA
FOR THE GOVERNMENT
THE KINGDOM OF SWAZILAND

Government Notice

MINISTRY OF WORKS, TRANSPORT AND COMMUNICATION

No. 33

1998

SOUTHERN AFRICAN CUSTOMS UNION
MEMORANDUM OF UNDERSTANDING ON ROAD TRANSPORTATION
REGULATIONS, 1998

CROSS-BORDER ROAD TRANSPORTATION ACT, 1996

Under section 5(1) of the Cross-border Road Transportation Act, 1996 (Act No. 18 of 1996), I hereby make the regulations set out in the Schedule.

O.V. PLICHTA
MINISTER OF WORKS, TRANSPORT
AND COMMUNICATION

Windhoek, 19 February 1998

SCHEDULE

ARRANGEMENT OF REGULATIONS

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PART I
Interpretation

Definitions

1. In these regulations a word or expression to which a meaning has been assigned in the Act or the Agreement shall have the meaning assigned to it and unless the context otherwise indicates;

“Act” means the Cross-border Road Transportation Act, 1996 (No. 18 of 1996);

“agreement” means the cross-border road transportation agreement entered into pursuant to the Memorandum of Understanding on Road Transportation, Proclamation No. 6 of 1998;

“authorised officer” means -

- (i) an officer defined in section 1 of the Road Transportation Act, 1977 (Act No. 74 of 1977);
- (ii) a traffic officer appointed in terms of section 3 of the Road Traffic Ordinance, 1967 (Ordinance 30 of 1967);
- (iii) an officer defined in section 1 of the Customs and Exercise Act, 1964 (Act No. 91 of 1964);
- (iv) an officer appointed in terms of section 3(1)(b) of the Immigration Control Act, 1993 (Act No. 7 of 1993); or
- (v) a member of the Namibian Police appointed in terms of the Police Act, 1990 (Act 19 of 1990);

“certificate of fitness” means the certificate referred to in section 1 of the Road Traffic Ordinance, 1967 (Ordinance 30 of 1967);

“competent authority” means the Deputy Director of Transport Regulation, services in the Ministry of Works, Transport and Communications;

“consignment note” means the document set out as Annexure D to the Agreement;

“copy” means a copy of an original document which copy has been certified to be a true and correct copy in terms of the Justices of the Peace and Commissioners of Oath Act, 1963 (Act No. 16 of 1963);

“passenger list” means the passenger list set out as Annexure E to the Agreement; and

“Southern African Customs Union”, or “Customs Union” means the customs union referred to in Regulation 3914, published in the *Gazette* No. 2584 of 12 December 1969.

PART II

Applications

Application for permit

2. (1) A Namibian carrier who wishes to undertake cross-border road transportation shall, personally or through a representative, make a written application for a permit to the competent authority.

(2) The application referred to in subregulation (1) shall be made in the form Annexure I and shall contain the following information -

- (a) name of applicant;
- (b) trade name of applicant, whether or not applicant is registered;
- (c) a description of the type of business operated by applicant;
- (d) the postal address, street address and telephone number of applicant;
- (e) the registration number, chassis number, make, type of the vehicle to be used;
- (f) the tare and gross vehicle mass of the vehicle if the vehicle is to convey goods;
- (g) the maximum number of passengers which the vehicle can carry if the vehicle is to convey passengers;
- (h) the certificate of fitness in respect of the vehicle to be used or a copy of the certificate of fitness;
- (i) type of transportation required, number of journeys, country of origin, country of transit and country of destination; and

- (j) in the case of a scheduled international passenger service, the route description of the journey, the timetable and the tariff chargeable to each passenger per kilometre.
- (3) In addition to the information supplied under subregulation (2) if -
 - (a) the applicant is an individual person or a partnership the applicant shall supply the competent authority with -
 - (i) his or her identity document number or the identity document number of the senior member of the partnership;
 - (ii) the original identity document of the applicant or of the senior member of the partnership or a copy of the identity document of that person; and
 - (iii) the nationality of the applicant or of a senior member of the partnership,
 - (b) the applicant is a company or closed corporation it shall supply the competent authority with;
 - (i) the business registration number of the company or close corporation; and
 - (ii) the original business registration certificate or a copy; or
 - (c) the applicant is a body of persons it shall supply the competent authority with;
 - (i) the name of the chairman, managing director or senior member of the body;
 - (ii) the nationality of the chairman, managing director or senior member of the body;
 - (iii) the identity document number of the chairman, managing director or senior member of the body; and
 - (iv) the original identity document of the chairman, managing director or senior member of the body or a copy of the identity document of the chairman, managing director or senior member of the body.

Fees

3. (1) The applicant referred to in regulation (2) shall submit the completed application forms together with a fee of N\$15,00 to the competent authority.

(2) The fee referred to in subregulation (1) is not refundable even if the application is granted, refused or withdrawn.

Replacement vehicle

4. (1) A permitholder who wishes to replace the vehicle in relation to which a permit has been issued in terms of these regulations shall -

- (a) supply the particulars of the replacement vehicle in the relevant portions of the form Annexure 1; and
- (b) submit the completed form Annexure I together with the original permit to the competent authority.

PART III Issue of permits

Consideration of application

5. (1) On receipt of an application made in terms of regulation 2 or 4 the competent authority may -

- (a) grant the application unconditionally;
- (b) grant the application and attach a condition to the permit; or
- (c) refuse the application.

(2) In considering an application made in terms of regulation 2 or 4, the competent authority may take the following into consideration -

- (a) whether or not the applicant operates from the address given in the application;
- (b) the ability of the applicant to conduct the business of cross-border road transportation;
- (c) the effect which the granting of the application may have on the annual quota afforded to the Namibian operators by the Transport Liaison Committee;
- (d) whether the applicant has complied with regulation 9(3);
- (e) whether the applicant has complied with Agreement and these regulations and for this purpose reference may be made to a written warning which was issued to applicant pursuant to regulation 11; or
- (f) any other factor which may be considered relevant to safeguarding the public.

(3) The competent authority shall communicate its decision, in writing to the applicant or to his or her representative.

(4) A permit issued in terms of these regulations shall expire -

(a) on the date which the competent authority has specified; or

(b) on the date on which the permit holder exhausts the journeys which he or she has been authorised to undertake;

whichever of the two dates is earlier.

Duplicate permit

7. (1) A permit holder who wishes to obtain a duplicate permit shall -

(a) complete the relevant portion of Annexure I; and

(b) submit to the competent authority the completed form Annexure I together with the original of the permit if available and the passenger list or consignment note relating to the original permit.

(2) On receipt of information supplied under subregulation (1) the competent authority shall issue a duplicate permit.

(3) The competent authority shall endorse on a duplicate permit issued under subregulation (1) -

(a) the word "duplicate"; and

(b) the number of journeys which have not been undertaken under the original permit.

(4) No fee is payable for the issuing of a permit or duplicate permit issued under these regulations.

PART IV General Provisions

Obligations of permit holder

8. (1) If there is a change in the information supplied under regulation 2, the permit holder shall within 21 days after the change, endorse the new information onto the relevant part of Annexure I and thereafter submit the completed form to the competent authority.

(2) If a certificate of fitness which relates to a vehicle in relation to which a permit has been issued expires, the permit holder shall within 21 days after the

expiry, obtain a new certificate of fitness for the vehicle and submit the certificate of fitness to the competent authority.

(3) If a permitholder fails to comply with subregulation (2) the permit becomes invalid at the expiry of the period referred to in that subregulation.

(4) The permitholder or his or her driver shall ensure that the vehicle used for cross-border road transportation -

- (a) is in a good condition and is suitable for conveying the passengers or goods as provided for in the permit;
- (b) is in a roadworthy condition as required by road traffic legislation applicable in the Customs Union area;
- (c) is used in accordance with conditions prescribed by the road traffic legislation applicable in the Customs Union area;
- (d) is used in accordance with a condition imposed by a competent authority;
- (e) is not used in such a manner that it endangers the safety of a person or property;
- (f) does not exceed the authorised gross vehicle mass determined by road traffic legislation applicable in the Customs Union unless permission has been obtained in terms of section 170(1) of the Road Traffic Ordinance, 1967 (Ordinance No. 30 of 1967); and
- (g) does not exceed the permitted overall length determined by road traffic legislation applicable in the Customs Union unless permission has been obtained in terms of section 103 of the Road Traffic Ordinance, 1967 (Ordinance No. 30 of 1967).

(5) A permitholder shall maintain adequate personnel and resources for the proper control, maintenance and storage of a vehicle which is to be used for cross-border transportation.

(6) A permitholder shall ensure that the driver of a vehicle which is being used for cross-border road transportation -

- (a) keeps, during the course of a journey, the permit and the consignment note or passenger list on the vehicle and that the permit and consignment note or passenger list are easily available for inspection by an authorised officer;
- (b) holds a driver's licence which authorises the driver to drive the vehicle in question as determined by the road traffic legislation applicable in the Customs Union;

- (c) holds a valid driving permit as determined by road traffic legislation applicable in the Customs Union; and
- (d) complies with the requirements of road traffic legislation and the Criminal Procedure Act 1977 (Act No. 51 of 1977) when a summons or notice to appear in court has been issued in consequence of a violation of road traffic legislation.

(7) A permit holder shall ensure that the driver of vehicle which is being used for cross-border road transportation produces -

- (a) the permit;
- (b) the passenger list in case of passenger carriage;
- (c) the consignment note, in case of goods carriage; and
- (d) a permit issued in terms of sections 170(1) or 103 of the Road Traffic Ordinance, 1967 (Ordinance No. 30 of 1967) where applicable; to an authorised officer.

(8) If the authorised officer referred to in subregulation (7) is stationed at a Namibian border post, he shall -

- (a) make an endorsement on the permit to indicate that an outward or a return journey has been undertaken; and
- (b) date stamp the passenger list or consignment note.

(9) Nothing in this section shall be construed as -

- (a) excluding a driver who is driving a vehicle for cross-border road transportation purposes from complying with an obligation which is imposed on a permit holder by subregulations (4), (6) or (7); or
- (b) excluding a permit holder who is driving a vehicle for cross-border road transportation purposes, from complying with an obligation imposed under subregulations (4), (6) and (7).

Records

9. (1) A permit holder shall keep or cause to be kept on the vehicle in relation to which a permit has been issued -

- (a) all the consignment notes; or
- (b) all the passenger lists,

which relate to the permit.

(2) On receipt of goods which are to be conveyed in terms of a permit, the permitholder or his or her employee shall compile, the consignment note which is referred to in subregulation (1).

(3) At the commencement of each journey pursuant to a permit, the permitholder or his or her employee shall compile, the passenger list which is referred to in subregulation (1).

(4) A permitholder shall within 21 days after -

(a) the expiry of a permit as contemplated in regulation 5(4); or

(b) the discontinuance of cross-border road transportation pursuant to a permit,

forward, to the competent authority, by hand or registered post, the permit and the consignment notes or passenger lists for each journey which was undertaken in terms of the permit.

Applicable Law

10. (1) Where a permitholder, his or her employee or his or her agent contravenes the road traffic legislation or the road transportation legislation which is applicable in the Customs Union, or these regulations, to competent authority may at its own discretion or on receipt of a request from the competent authority of the country where the contravention took place, issue out a notice to the permitholder informing him or her of the contravention and the action which is proposed to be taken against him or her.

(2) The notice referred to in subregulation (1) shall -

(a) be in writing;

(b) be delivered by hand or by registered post at the address supplied under regulation 2(2)(d);

(c) contain the nature and particulars of the complaint laid against the permitholder;

(d) contain the action which is proposed to be taken against the permitholder and the reasons for taking the proposed action; and

(e) advise the permitholder that he or she is entitled to be heard by the competent authority before a determination is made.

(3) A permitholder who wishes to be heard by the competent authority shall within 7 days after receiving the notice referred to in subregulation (1) make a written request for a hearing by the competent authority.

- (4) The permitholder shall deliver the written request referred to in subregulation (3) to the competent authority by hand or by registered post.
- (5) At the expiry of the period referred to in subregulation (3) or on receipt of the written request referred to in subregulation (4) the competent authority may do any of the following things -
- (a) suspend the permit for a period not exceeding 3 months;
 - (b) revoke the permit or revoke part of the permit and attach a condition which is reasonably necessary in the circumstances;
 - (c) prohibit the permitholder from applying for a permit either permanently or temporarily;
 - (d) alter the conditions or requirements of the permit by removal of some conditions of requirement or addition of new conditions or requirements; or
 - (e) allow the permitholder or his or her employee or agent to rectify the contravention subject to a condition which the competent authority may impose.
- (6) Before making a decision in terms of subregulation (5) a competent authority may take into account -
- (a) any previous written warning issued to the permitholder or his or her employee or agent in terms of regulation 11(13); or
 - (b) any previous traffic or transportation related contraventions which were committed by the permitholder or his or her agent or employee.
- (7) A decision made in terms of subregulation (5) shall -
- (a) be in writing; and
 - (b) be delivered to the permitholder by hand or by registered post at the address supplied under regulation 2(2)(d).
- (8) A permitholder shall -
- (a) within 7 days after receiving the notice referred to in subregulation (1) and if he does not wish to be heard by the competent authority; or
 - (b) within 7 days after receiving the decision of the competent authority as provided for in subregulation (7),

submit the permit, together with the consignment note or passenger list relating to the permit, to the competent authority by registered post or by hand.

Authorised officers

11. (1) Where there are reasonable grounds to suspect that a vehicle is being used for cross-border road transportation an authorised officer may -

- (a) direct the driver of the vehicle to stop the vehicle to enable the authorised officer to -
 - (i) examine the goods in order to ascertain whether they are being conveyed in terms of a permit;
 - (ii) to ascertain whether a person who is on the vehicle is being conveyed in terms of a permit;
 - (iii) examine the registration and licence particulars of the vehicle;
or
 - (iv) examine the vehicle in order to ascertain whether it is roadworthy,
- (b) request the driver or a person in charge of the vehicle to -
 - (i) produce the permit and passenger list or consignment note;
 - (ii) produce the certificate of fitness of the vehicle;
 - (iii) furnish his or her name and address as well as documentary proof of the name and address;
 - (iv) supply the particulars of the business for which the vehicle is being used; or
 - (v) supply the name and address of the owner of the vehicle as well as documentary proof of the owner's name and address,
- (c) require a person being conveyed on the vehicle or who has previously been conveyed on the vehicle to -
 - (i) supply his name and address as well as documentary proof of the name and address;
 - (ii) state whether he or she has given or is to give consideration for being conveyed on the vehicle; or
 - (iii) give the name and address of a person to whom he or she has given consideration for being conveyed;
 - (iv) state the nature of consideration given.

(2) A competent authority may issue a written order which authorises an authorised officer to confiscate a permit which is specified in the order.

(3) An authorised officer shall confiscate a permit which is specified in the order referred to in subregulation (2) and hand over the permit to the competent authority.

(4) Where it is reasonably suspected that an offence has been committed in contravention of the Act, these regulations or the Agreement, an authorised officer may for the purposes of investigating the offence enter any premises and whilst on the premises the authorised officer may -

- (a) question any person who is reasonably believed to possess information which might lead to the conclusion of investigations;
- (b) request for a document which is reasonably believed to have been used in the commission of the offence;
- (c) examine a document which is reasonably believed to have been used in the commission of the offence;
- (d) make copies of any document which is reasonably believed to have been used in the commission of an offence; or
- (e) question any person in relation to a document which is reasonably believed to have been used in the commission of an offence.

(5) An authorised officer who exercises the powers conferred by subregulation (4) shall exercise the powers in compliance with Chapter 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(6) An authorised officer may request the driver or a person in charge of a vehicle which is being used in terms of a permit to open the vehicle to enable the authorised officer to examine the contents of the vehicle.

(7) If the driver or person in charge of the vehicle fails or refuses to comply with a request made in terms of subregulation (6) the authorised officer may open the vehicle and examine the contents of the vehicle.

(8) After opening a vehicle and examining the contents as provided for in subregulation (7) the authorised officer shall indicate in a prescribed certificate that the vehicle has been opened and that the contents have been examined in terms of subregulation (7).

(9) A competent authority shall prescribe the form and contents of the prescribed certificate which is referred to in subregulation (8).

(10) An authorised officer may, prevent a vehicle which is being used in contravention of the Act, the Agreement or these regulations from leaving Namibia.

(11) In addition to the powers conferred by the Agreement or these regulations an authorised officer may -

- (a) impound a vehicle which is reasonably suspected of being or having been, used for cross-border road transportation contrary to the Act, the Agreement or these regulations;
- (b) impound goods which are reasonably suspected to have been conveyed contrary to the Act, the Agreement or these regulations; or
- (c) direct the driver of a vehicle referred to in paragraph (9) to deliver the vehicle and the goods to the nearest police station.

(12) A vehicle which is impounded in terms of subregulation (ii)(a) and goods which have been impounded in terms of subregulation 11(b) shall be dealt with in accordance with Chapter 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

- (13) (a) The competent authority or an authorised officer may issue a written warning to a permit holder, or his or her agent or employee who has contravenes these regulations.
- (b) The written warning issued in terms of paragraph (a) shall be delivered to the permit holder by hand or by registered post at the address supplied under regulation 2(2)(d).

Offences

12. A person who -

- (a) contravenes regulation 8, 9 or 10(8);
- (b) fails to comply with a direction or request made by an authorised officer in terms of regulation 11;
- (c) undertakes cross-border road transportation in contravention of the Agreement, the Act or these regulation;
- (d) undertakes cross-border road transportation contrary to the requirement of a permit;
- (e) being a permit holder, allows a person who does not hold a permit, to use the permit holder's permit;
- (f) obtains a permit knowing that another permit has already been issued in relation to the same vehicle;
- (g) forges a permit; or

- (h) gives false information when required to supply information under these regulations,

commits an offence and is liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period which does not exceed 2 years, or to both fine and imprisonment.

(2) If an offence under regulation 8(6) or (7) is committed by an agent or employee of a permitholder, the agent or employee shall be taken to have committed the offences and liable to the penalty provided for in subregulation (1).

(3) Where a permitholder or his or her agent or employee is convicted of an offence under these regulations the competent authority may exercise the powers conferred on it by regulation 10.
