

ROAD TRAFFIC MANAGEMENT CORPORATION ACT 20 OF 1999

[ASSENTED TO 14 APRIL 1999] [DATE OF COMMENCEMENT: 14 DECEMBER 2001]

(English text signed by the President)

as amended by

Road Traffic Management Corporation Amendment Act 25 of 2000

Prevention and Combating of Corrupt Activities Act 12 of 2004

Public Service Amendment Act 30 of 2007

Transport Agencies General Laws Amendment Act 42 of 2007

ACT

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

Preamble

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

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

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

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

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

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

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

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**CHAPTER 1
DEFINITIONS AND OBJECTIVES (ss 1-2)**

>1 Definitions

In this Act, unless the context otherwise indicates-

'board' means the board established in terms of section 8 (1);

'business group' means a service provider, including, but not limited to-

(a) a provincial authority;

(b) a local government body;

(c) a private sector entity;

(d) any entity established through a public and private sector partnership;

(e) the SAPS; and

(f) any statutory transport institution established in terms of national or provincial legislation and vested with road traffic powers;

'business and financial plan' means the business and financial plan of the Corporation approved in terms of section 14 (5);

'financial year', in relation to the Corporation, means the period determined in terms of section 14 (1);

'Corporation' means the Road Traffic Management Corporation established in terms of section 3;

'functional unit' means a functional unit of the Corporation established in terms of section 18 (1);

'governance agreement' means the agreement concluded by the Shareholders Committee with the board in terms of section 9 (1);

'innovative project' means a project which possesses at least one of the following attributes:

- (a) a recognised process, design, methodology or engineering concept which has demonstrated its ability to significantly reduce construction costs, accelerate project execution, improve safety, enhance project performance, extend economic life, reduce costs of facility maintenance and operations or reduce negative environmental impacts or social or economic disturbances or disruptions during either the project implementation or construction phase or the operation phase;
- (b) a process for which the project proponent or a member of the proponent joint equity venture or consortium possesses exclusive rights, either worldwide or regionally;
- (c) a design, methodology or engineering concept for which the proponent or a member of the proponent joint equity venture or consortium possesses intellectual property rights; or
- (d) clustering services in the transport and other sectors with the potential to enhance the efficiency and affordability of transportation;

'joint equity venture contract' means a contractual arrangement between the Corporation and a private person or entity for the purpose of undertaking a new commercial activity in respect of which the Corporation is a shareholder or provides a portion of the equity or investment capital;

'local government body' means a metropolitan, district or local municipality as contemplated in the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

'MEC' means the Member or Members of the Executive Committee of a province who is responsible for matters connected with road traffic in that province;

'Minister' means the Minister of Transport;

'National Commissioner' means the National Commissioner referred to in section 6 (1) of the South African Police Service Act, 1995 (Act 68 of 1995);

'negative concession' means a contract to provide a road traffic service which is essential to the public but cannot be provided at a profit and requires public financing;

'prescribed' means prescribed by regulation in terms of section 48 (1);

'public service obligation' means a social obligation of the State to provide a non-profitable road traffic service;

'ring-fencing', in relation to functional units, means containing each functional unit and keeping separate accounting records for each one in order to ascertain each functional unit's profitability and discourage cross-subsidisation;

'road traffic law enforcement officer' is an authorised officer appointed in terms of section 3 of the National Road Traffic Act, 1996 (Act 93 of 1996), who meets the standards set in the national road traffic law enforcement code referred to in section 32 (1) of this Act, and includes a member of a municipal police service which may be established in terms of section 64 of the South African Police Service Act, 1995 (Act 68 of 1995);

'road traffic service' means a service that must be provided in terms of any law for the purpose of road traffic regulation;

'SAPS' means the South African Police Service established by section 5 of the South African Police Service Act, 1995 (Act 68 of 1995);

'Shareholders Committee' means the Shareholders Committee established in terms of section 6 (1).

>2 Objectives of Act

The objectives of this Act are, in the public interest-

- (a) to establish the Road Traffic Management Corporation as a partnership between national, provincial and local spheres of government by-
 - (i) effecting the pooling of road traffic powers of the Minister and every MEC and the resources of national and provincial spheres of government responsible for road traffic management, in support of enhanced co-operative and co-ordinated road traffic strategic planning, regulation, facilitation and law enforcement;
 - (ii) strengthening national and provincial governments' collective capacity to govern road traffic through partnerships with local government bodies and the private sector; and
 - (iii) focussing government on effective strategic planning, regulation, facilitation and monitoring;
- (b) to enhance the overall quality of road traffic service provision and, in particular, to ensure safety, security, order, discipline and mobility on the roads;
- (c) to protect road infrastructure and the environment through the adoption of innovative practices and implementation of innovative technology;
- (d) to phase out, where appropriate, public funding and phase in private sector investment in road traffic on a competitive basis;
- (e) to introduce commercial management principles to inform and guide road traffic governance and decision-making in the interest of enhanced service provision;
- (f) to optimise the utilisation of public funds by-
 - (i) limiting investment of public funds to road traffic services which meet a social or non-commercial strategic objective and which have poor potential to generate a reasonable rate of return; and
 - (ii) securing, where appropriate, full cost recovery on the basis of the user-pays principle;
- (g) to regulate, strengthen and monitor intergovernmental contact and co-operation in road traffic matters;
- (h) to improve the exchange and dissemination of information on road traffic matters;
- (i) to stimulate research in road traffic matters and effectively utilise the resources of existing institutes and research bodies; and
- (j) to develop human resources in the public and private sectors that are involved in road traffic.

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CHAPTER 2 ESTABLISHMENT AND GOVERNANCE OF ROAD TRAFFIC MANAGEMENT CORPORATION (ss 3-23)

>3 Establishment of Corporation

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

Document 5 of 54**>4 Independence of Corporation**

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

Document 6 of 54**>5 Composition of Corporation**

The Corporation consists of-

- (a) a Shareholders Committee;
 - (b) a chief executive officer;
 - (c) a board, subject to a decision of the Shareholders Committee to establish a board in terms of section 8;
 - (d) managers of functional units appointed in terms of section 19 (1); and
 - (e) such professional, technical, administrative and support staff, appointed in terms of section 20 (1), as may be required for the proper performance of its functions.
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Document 7 of 54**>6 Establishment and composition of Shareholders Committee**

(1) A Shareholders Committee is hereby established.

(2) The Shareholders Committee consists of-

- (a) the Minister;
- (b) every MEC; and
- (c) two representatives nominated by the national organisation recognised in terms of section 2 (a) of the Organised Local Government Act, 1997 (Act 52 of 1997).

(3) Each member of the Shareholders Committee has, subject to subsection (4), one vote.

(4) If a province has more than one MEC as member of the Shareholders Committee the vote may only be exercised by the MEC of that province whose portfolio is most closely connected to the function in respect of which a decision needs to be taken.

(5) The chief executive officer must attend the meetings of the Shareholders Committee and may take part in deliberations but has no vote.

Document 8 of 54**>7 Role of Shareholders Committee**

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

(2) The Shareholders Committee is responsible for directing and guiding the proper functioning of the Corporation in the public interest and for reflecting, in its decision-making procedures, the spirit of co-operation and mutual trust contemplated in section 41 (1) (h) of the Constitution of the Republic of South Africa Act, 1996 (Act 108 of 1996).

>8 Appointment of and delegation to board

(1) The Shareholders Committee may subject to subsection (2) establish a board of the Corporation consisting of-

- (a) the Chief Executive Officer;
- (b) if the Minister specifies an office in the Department for the purpose of this subsection, the person for the time being holding that office; and
- (c) not more than eight persons appointed by that Committee.

[Sub-s. (1) substituted by s. 22 (a) of Act 42 of 2007.]

(1A) The members contemplated in subsection (1) (a) and (b) do not have voting rights.

[Sub-s. (1A) inserted by s. 22 (b) of Act 42 of 2007.]

(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 governance, information technology and road traffic management.

[Sub-s. (2) substituted by s. 22 (c) of Act 42 of 2007.]

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

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

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

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

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

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

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

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

(10) Before the members of the Board are appointed, the Shareholders Committee must, through the media, invite members of the public to nominate persons who comply with the criteria contemplated in subsection (2).

[Sub-s. (10) substituted by s. 22 (d) of Act 42 of 2007.]

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

(12) An appointed member-

- (a) holds office for a period not exceeding three years, on the conditions determined by the Shareholders Committee on appointment of such member; and

- (b) may be re-appointed for a further period not exceeding three years, in which case the procedure contemplated in subsection (10) does not apply.

[Sub-s. (12) substituted by s. 22 (e) of Act 42 of 2007.]

(12A) Notwithstanding subsection (12), the Shareholders Committee may extend the term of office of any member of the Board for such further period as it may take to finalise the appointment of a new Board.

[Sub-s. (12A) inserted by s. 22 (f) of Act 42 of 2007.]

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

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

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

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>9 Governance agreement with board

(1) The Shareholders Committee must, after consultation with the Minister of Finance and every MEC responsible for finance, enter into a written governance agreement with the board relating to-

- (a) the expectations of national, provincial and local governments in respect of the Corporation's scope of business, efficiency, financial performance and achievement of objectives;
- (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;
- (c) the measures that are necessary to protect the financial soundness of the Corporation, including-
 - (i) the ring-fencing of functional units; and
 - (ii) subject to section 34, the provision of business opportunities to the private sector;
- (d) the procedures which the Corporation must follow in the awarding of tenders and granting of concessions;
- (e) key performance indicators in terms of which the Corporation's performance will be evaluated;
- (f) the structure of the business and financial plan;
- (g) the level and scope of monitoring of the Corporation's performance by the chief executive officer; and
- (h) any other matter relating to the performance of the Corporation's functions in terms of this Act.

(2) The Shareholders Committee and the board may, in terms of subsection (1), in writing amend the governance agreement from time to time.

(3) The Shareholders Committee and the board must, before entering into the governance agreement or an amendment thereof, on any matter which may adversely affect them, consult with-

- (a) parties who have an interest in road traffic regulation, including, but not limited to, educational organisations and health organisations; and
- (b) persons to whom tenders or concessions contemplated in subsection (1) (d) have been awarded.

(4) The Shareholders Committee must publish the governance agreement in the *Gazette* and every *Provincial Gazette* within 30 days from the date on which that governance agreement was entered into, and any amendment thereto must be so published within 30 days of that amendment coming into operation.

(5) Any member of the public may inspect a copy of the governance agreement at the head office of the Corporation during business hours.

(6) Failure by the board to comply with any provision of the governance agreement does not affect the validity or enforceability of any agreement, right, obligation or liability entered into, acquired or incurred by the Corporation.

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10 Conditions and period of office of board members

(1) An appointed member of the board vacates his or her office immediately if he or she-

(a) has been or is convicted-

(i) whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged statement, perjury or any offence involving dishonesty; or

(ii) of any offence in terms of the Prevention of Corruption Act, 1958 (Act 6 of 1958), the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, the Companies Act, 1973 (Act 61 of 1973), or this Act;

[Sub-para. (ii) substituted by s. 36 (1) of Act 12 of 2004.]

(b) without authorisation, has disclosed or discloses, or improperly has acted or acts on, information gained as a result of his or her membership of the board;

(c) is or becomes a political office bearer;

(d) is or becomes an unrehabilitated insolvent or has committed or commits an act of insolvency;

(e) has been or is removed from an office of trust on account of misconduct; or

(f) has been or is relieved of his or her office in terms of subsection (3) or (4).

(2) If a member of the board, or his or her spouse, immediate family member, life partner or business associate has any direct or indirect financial interest in any matter to be dealt with at any meeting of the board, that member-

(a) must immediately after that interest has come to his or her attention, disclose that interest and the extent thereof in a written statement to the chairperson of the board, who must table that statement at the beginning of the next meeting of the board;

(b) may not attend the portion of a meeting of the board during which the matter is considered;

(c) may not in any manner take part in the consideration of that matter by the board; and

(d) may not in any manner endeavour to influence the opinion or vote of any other member of the board in connection with that matter.

(3) The Shareholders Committee must immediately relieve any appointed member of his or her office if that member has-

(a) failed to comply with subsection (2);

(b) failed to attend three consecutive meetings of the board without prior leave of the chairperson as noted in the minutes of those meetings;

(c) been unable to perform his or her functions of office effectively due to continued serious ill-health; or

(d) been declared by a competent court to be of unsound mind.

(4) The Shareholders Committee may, on the same date and conditions, relieve all the appointed members of the board of their offices if-

(a) they have failed to substantially comply with the governance agreement and the business and financial plan; and

(b) the Shareholders Committee has-

(i) in writing individually notified every appointed member of the board of the nature of such failure, and has, within seven days of the date of such notification, tabled a copy of the notification in Parliament or, if Parliament is not then in session, published a copy of the notification in the *Gazette*;

(ii) afforded the board a reasonable opportunity to make a written submission to it in respect of that notification; and

(iii) if such submission does not satisfactorily explain the failure specified in that notification, afforded the board a reasonable opportunity to rectify that failure but the board has failed to do so.

(5) A member of the board holds office for a period not exceeding five years.

(6) A member of the board may resign on one month's written notice to the Shareholders Committee.

(7) The Shareholders Committee must fill vacancies on the board as soon as possible in accordance with section 8 (10).

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>11 Meetings of Shareholders Committee

(1) The Minister is the chairperson of the Shareholders Committee.

(2) The Minister must convene the Shareholders Committee at least four times a year at the place and time specified by the Minister.

(3) The Shareholders Committee must appoint a member referred to in section 6 (2) (b) or (c) as deputy chairperson for a period not exceeding 12 months.

(4) The Minister or, in his or her absence, the deputy chairperson, if he or she is present, presides at every meeting of the Shareholders Committee.

(5) If both the Minister and the deputy chairperson of the Shareholders Committee are unable to perform any function of the chairperson, the other members must designate one of their number to act as chairperson during such inability.

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

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

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

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

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

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

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>12 Shareholders Committee's decisions that require special majority

Any decision-

- (a) to change policy or adopt a new policy in terms of section 28 (1) (b) (iii);
- (b) to recommend legislation, including amendments to this Act or any other legislation, concerning road traffic matters;
- (c) to deviate from, or amend, the business and financial plan for the Corporation;
- (d) to approve the annual report as contemplated in section 22 (1);
- (e) to establish a board and to appoint members of the board in terms of section 8 (1);
- (f) to delegate powers to the board in terms of section 8 (4);
- (g) to approve the national road traffic law enforcement code;
- (h) to award a contract for the provision of road traffic law enforcement services to provincial authorities and local government bodies, the SAPS and any other statutory transport institution vested with powers to execute road traffic law enforcement;
- (i) to discharge the chief executive officer;
- (j) to impose or adjust transaction fees as contemplated in section 24 (1) (a);
- (k) to combine or divide areas of registering authorities as contemplated in section 3 of the National Road Traffic Act, 1996 (Act 93 of 1996); or
- (l) to exempt a local government body from compliance with the road traffic law enforcement code as contemplated in section 33 (10),

requires a two-thirds majority in the Shareholders Committee.

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>13 Directives

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

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

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

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

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

(5) The board must submit a copy of a directive issued in terms of subsection (1) by it to the Shareholders Committee who, in turn, must submit it to-

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

- (1) The financial year of the Corporation spans the period as determined by the Shareholders Committee.
- (2) The chief executive officer is responsible for the preparation of the business and financial plan, and to this end, must initiate the preparation of a draft plan in respect of the ensuing three financial years at least six months before the commencement of the first of those three financial years of the Corporation.
- (3) For the purpose of subsection (2), the managers of functional units must, in the format and within the period specified in a written instruction issued by the chief executive officer, provide draft inputs relating to the focus of their functional units to the draft business and financial plan.
- (4) The chief executive officer must-
 - (a) consolidate the inputs contemplated in subsection (3); and
 - (b) submit the draft business and financial plan to the managers of functional units for comment.
- (5) The chief executive officer must, after consideration of any comments received timeously from the managers of functional units, finalise the draft business and financial plan, and at least two months before the commencement of each financial year, submit the plan and any amendments thereto, to the Shareholders Committee for consideration and approval.
- (6) The draft business and financial plan must specify-
 - (a) the objectives of the Corporation for each of the ensuing three financial years;
 - (b) the Corporation's scope of business, efficiency, financial performance and pricing of services;
 - (c) the key performance indicators, targets and criteria for assessing the performance of the Corporation;
 - (d) the principles, strategies, policies and budgets for achieving the objectives of the Corporation, which must include the commitment to contract out road traffic service provision to appropriate business groups and, where appropriate, phase in private investment in road traffic;
 - (e) the measures that are necessary to protect the financial soundness of the Corporation, including-
 - (i) the ring-fencing of functional units; and
 - (ii) subject to section 34, the provision of business opportunities to the private sector; and
 - (f) the thresholds at which the chief executive officer must obtain the approval of the Shareholders Committee in the awarding of tenders and granting of concessions.
- (7) For the purpose of mobilising private sector investment or participation in road traffic as contemplated in section 34, the business and financial plan must, in respect of every road

traffic-related asset or service, specify-

- (a) the nature of the investment or services to be procured;
- (b) the transfer actions contemplated in section 34 to be undertaken in respect of such a road traffic asset or service;
- (c) the order of priority in which the actions referred to in paragraph (b) are to be undertaken;
- (d) the appropriate contract to be utilised for the actions referred to in paragraph (b);
- (e) whether the road traffic asset or service can be operated at a reasonable rate of return or whether such asset or service can only be provided in terms of a negative concession;
- (f) the nature and levels of essential public service obligations;
- (g) the potential for unbundling road traffic services or bundling road traffic services with each other or with other transport or non-transport related services; and
- (h) the period within which any actions in terms of paragraph (b) must be completed.

(8) The Minister and each MEC serving on the Shareholders Committee must cause copies of the approved business and financial plan to be tabled in Parliament and every provincial legislature, as the case may be, within 14 days of receipt of that plan or, if Parliament or the provincial legislature concerned is not then in session, within 14 days after commencement of its next ensuing session.

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

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>15 Appointment of chief executive officer

(1) The Shareholders Committee must, subject to subsection (3), appoint a chief executive officer of the Corporation within three months after the date of commencement of this Act.

[Sub-s. (1) substituted by s. 1 (a) of Act 25 of 2000.]

(2) For the purpose of subsection (1), the Shareholders Committee must invite applications for the post of chief executive officer by publishing an advertisement in the media.

(3) Any person appointed as chief executive officer of the Corporation must comply with the requirements determined by the Shareholders Committee by notice in the *Government Gazette*.

[Sub-s. (3) substituted by s. 1 (b) of Act 25 of 2000.]

(4) The appointment of the chief executive officer is subject to the conclusion of a performance contract between such officer and the Shareholders Committee.

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

(6) A chief executive officer is eligible for reappointment after the expiration of the period of appointment referred to in subsection (5).

(7) The chief executive officer holds office, subject to subsections (8) and (9), on the terms and conditions, including remuneration and allowances, as determined in writing by the Shareholders Committee, after consultation with the Minister of Finance.

(8) The chief executive officer may not engage in any other paid employment and may not participate in any activity in respect of which he or she is in any way remunerated or receives any benefits or allowances, without the prior written approval of the Shareholders Committee.

(9) The chief executive officer or his or her spouse, immediate family member, life partner

or business associate, may not hold any direct or indirect financial interest in any road traffic activity or the road traffic industry-

- (a) without the prior approval of the Shareholders Committee; and
 - (b) unless the minutes of the meeting of the Shareholders Committee reflecting such approval are open to inspection by the public at the head office of the Corporation during business hours.
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>16 Publication and reporting

(1) The Shareholders Committee must, as soon as is practicable after each meeting and by notice in the *Gazette*, every *Provincial Gazette* and the media, cause full particulars to be published of a policy decided on in terms of section 28 (1) (b) (iii).

(2) The Shareholders Committee must present to Parliament and each provincial legislature, an annual written report as referred to in section 22 (4) on its activities.

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>17 Secretariat

The Minister may appoint as many persons or, in accordance with section 15 of the Public Service Act, 1994 (Proclamation 103 of 1994), second as many officials employed by the national Department of Transport, as he or she may reasonably determine to be necessary for administrative support and performance of the secretarial functions of the Shareholders Committee.

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>18 Establishment of functional units

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

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

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

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

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

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

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>19 Appointment of managers of functional units

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

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

(3) Any person appointed to the post of manager must comply with the requirements determined by the Shareholders Committee by notice in the *Government Gazette*.

[Sub-s. (3) substituted by s. 2 of Act 25 of 2000.]

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

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

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

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

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>20 Staff of Corporation

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

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

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

[Sub-s. (3) amended by s. 42 of Act 30 of 2007.]

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>21 Business groups

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

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>22 Annual report

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

year, consisting of-

- (a) a balance sheet, an income statement and a cash-flow statement which is a true and correct reflection of the state of affairs of the Corporation as at the end of that financial year;
- (b) a report on the Corporation in terms of subsection (2);
- (c) a report by the auditor of the Corporation, who must be registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991), in accordance with subsection (3); and
- (d) any other statement or report which the Shareholders Committee may reasonably require.

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

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

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

- (a) the balance sheet, income statement and cash-flow statement, as well as any other furnished information, fairly represent the financial position and results obtained by the Corporation in accordance with generally accepted accounting practice, as applied on a basis consistent with that of the preceding year;
- (b) the information furnished in terms of paragraph (a) is fair in all material respects and, if applicable, on a basis consistent with that of the preceding year;
- (c) the transactions that had come to his or her attention during auditing were in all material respects in accordance with the law and the objects and functions of the Corporation;
- (d) adequate measures and procedures exist for the proper application of sound economic, efficient and effective management; and
- (e) attention should be drawn to any other matter falling within the scope of the auditor's examination which, in his or her opinion, the public interest demands should be brought to the notice of the Shareholders Committee, Parliament and the relevant provincial legislatures.

(4) A copy of the annual report must, after its approval by the Shareholders Committee, be submitted to the Minister and every MEC who must table it in Parliament and every provincial

legislature, as the case may be, within 14 days of receipt of that report, or, if Parliament or a provincial legislature is not then in session, within 14 days after the commencement of its next ensuing session.

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

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>23 Transfer of assets and liabilities

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

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

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

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

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

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

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

- (a) before the transfer date, must be conducted by or against the State, as the case may be; and
 - (b) on or after the transfer date, must be conducted by or against the Corporation, as the case may be.
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CHAPTER 3 FUNDING (ss 24-26)

>24 Finance

(1) The Corporation is funded from-

- (a) monies prescribed, subject to section 48 (1) (b), which must include transaction fees charged by the Corporation for the sale of services;
- (b) penalties and fines payable to the Corporation as an issuing authority in terms of section 32 of the Administrative Adjudication of Road Traffic Offences Act, 1998 (Act 46 of 1998);
- (c) interest on invested cash balances; and
- (d) monies appropriated by Parliament.

(2) The Corporation must, with the concurrence of the Minister of Finance and every MEC responsible for finance, ensure that all fines and penalties paid to the Corporation as an issuing authority in terms of the Administrative Adjudication of Road Traffic Offences Act, 1998, are utilised by the Corporation in respect of road traffic management.

(3) At the end of each financial year the chief executive officer must report to the Shareholders Committee on any surplus funds of the Corporation, as may be determined by the Minister and every MEC with the concurrence of the Minister of Finance and every MEC responsible for finance in each province.

(4) The Shareholders Committee may direct that payments be made from the surplus funds to a province, but such payments must be proportionate to the relative contribution to the profits generated through the provision of road traffic services in the province or received by an agent acting on behalf of the Corporation within the geographical area of the province.

(5) The Corporation must open and maintain one or more accounts with a bank registered finally as a bank in terms of the Banks Act, 1990 (Act 94 of 1990), in which must be deposited the money received by the Corporation and from which payments for it or on its behalf must be made.

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>25 Financial viability

(1) The chief executive officer is the accounting officer of the Corporation and must ensure that the expenses of the Corporation do not exceed its income.

(2) The Shareholders Committee or the board, as the case may be, must ensure that any directive issued in terms of section 13 falls within the parameters of the business and financial plan.

(3) The Shareholders Committee must obtain the concurrence of the Minister of Finance and every MEC responsible for finance to place at the disposal of the Corporation additional funding from either the national budget or a provincial budget in respect of-

(a) any directive that has financial implications not foreseen in the business and financial plan; or

(b) any cost or expense which-

(i) is a direct result of any directive issued by the Shareholders Committee or the board, as the case may be; and

(ii) the Corporation cannot readily recover from users of road traffic services or any other person who has benefited from any action taken by the Corporation in complying with that directive.

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>26 Application of Reporting by Public Entities Act

The Reporting by Public Entities Act, 1992 (Act 93 of 1992), applies to the Corporation after it has been entered as a listed entity as defined in section 1 of that Act.

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CHAPTER 4
FUNCTIONS (ss 27-33)

>27 Principal function of Corporation

The Corporation and its organs must, jointly and individually, act-

- (a) in the public interest; and
- (b) within the confines of-
 - (i) the approved business and financial plan;
 - (ii) the governance agreement concluded on the appointment of a board by a decision of the Shareholders Committee;
 - (iii) the performance contract concluded between the Shareholders Committee and the chief executive officer referred to in section 15 (4); and
 - (iv) performance contracts concluded between the chief executive officer and the respective managers of the functional units referred to in section 19 (4),

to enhance the overall quality of road traffic management and service provision.

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>28 Functions of Shareholders Committee

(1) The Shareholders Committee must-

- (a) ensure proper monitoring of the Corporation's performance and the attainment of its objectives, including-
 - (i) the level and scope of performance of the Corporation with reference to the business and financial plan;
 - (ii) the performance of public service obligations by the Corporation; and
 - (iii) the impact of investment contracts contemplated in section 37 and performance contracts as contemplated in sections 15 (4) and 19 (4),

by scrutinising reports submitted by the chief executive officer, in terms of section 29 (h), including reports, in terms of section 29 (c) concerning the implementation of directives issued to the chief executive officer;

- (b) after appropriate consultation, decide-
 - (i) which functions are to be carried out by each of the organs of the Corporation;
 - (ii) on proposed legislation, including amendments to this Act or any other legislation, concerning road traffic matters;
 - (iii) on a change in a policy or the adoption of a new policy by the Corporation;
 - (iv) on the suitability of proposals for the achievement of objectives; and
 - (v) to recommend the conclusion of an international agreement;
- (c) approve the final draft of-

- (i) the business and financial plan and any amendment thereto as contemplated in section 14 (5);
 - (ii) the annual report as contemplated in section 22 (1);
 - (iii) the national road traffic law enforcement code as contemplated in section 32; and
 - (iv) the governance agreement;
- (d) after appropriate consultation where consultation is required, approve-
- (i) the awarding of tenders or the granting of concessions above the thresholds as set out in the business and financial plan; and
 - (ii) transactions entered into to give effect to transfer actions contemplated in section 34;
- (e) consult on, and facilitate, the implementation of this Act or any other law relating to road traffic regulation;
- (f) consider the need for research and technical investigation relating to road traffic regulation, and take steps for it to be conducted;
- (g) require statements and reports from managers of functional units that may be reasonably required in the interest of informed decision-making;
- (h) respond to complaints received from the public and investigate complaints against the chief executive officer in terms of section 39 (3);
- (i) publish full particulars of policies decided on in the *Gazette* and every *Provincial Gazette*;
- (j) exercise and perform on behalf of the Corporation the powers and duties which have been conferred to the Corporation by contractual agreement between the MEC and the chief executive officer in terms of section 31; and
- (k) exercise and perform all the powers and duties conferred or imposed on it by this Act or by any other law.

(2) The Shareholders Committee may-

- (a) authorise the chief executive officer to assign functions to the managers of functional units;
- (b) issue a directive to a member of the public on conclusion of an enquiry by the chief executive officer;
- (c) re-open an enquiry; and
- (d) review the findings of an enquiry or refuse a request to review the findings.

(3) The Shareholders Committee may for the purposes of regulations to be made in terms of section 48-

- (a) establish an advisory regulations committee;
- (b) determine the purpose and functions of the advisory regulations committee in respect of regulations, or effect amendments thereto;
- (c) make appointments to the committee, including the chairperson and the deputy chairperson;
- (d) remove members from the committee; and
- (e) dissolve the committee.

(4) The Shareholders Committee, in appointing a member of the advisory regulations committee, must consider-

- (a) the powers and duties of the committee;
 - (b) the need for the committee to represent various relevant interests; and
 - (c) the expertise necessary for the committee to exercise its powers and perform its functions effectively.
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>29 Functions of chief executive officer

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

- (a) manage and control the day-to-day affairs of the Corporation in accordance with the business and financial plan;
- (b) undertake, in accordance with this Act and any other legislation concerning road traffic matters, the provision and rendering of road traffic services;
- (c) execute any directive of the Shareholders Committee issued in terms of section 13 and report to the Shareholders Committee on the implementation of the directive;
- (d) undertake research into road traffic matters;
- (e) after consultation with the Minister of Finance and every MEC responsible for finance, draw up a governance agreement to be concluded between the Shareholders Committee and the board, on the appointment of the board;
- (f) facilitate private sector investment by-
 - (i) undertaking feasibility and investment studies to ascertain technical, 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) organising investment contact visits;
 - (v) initiating contacts with other Ministries, Departments, state-owned enterprises, investment promotion centres and related parties;
 - (vi) collecting, updating and disseminating appropriate promotional and facilitatory information; and
 - (vii) any other appropriate method;
- (h) report to the Shareholders Committee-
 - (i) on the level and scope of performance of the Corporation in terms of the

- business and financial plan;
- (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;
- (i) perform the functions assigned to him or her by the Shareholders Committee and the board on its appointment;
 - (j) assign functions to the managers of functional units if authorised thereto by the Shareholders Committee in terms of section 28 (2) (a);
 - (k) exercise and perform all the powers and duties conferred or imposed by this Act or by any other law; and
 - (l) exercise and perform all the powers and duties incidental to the above-mentioned powers and duties.
-

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>30 Functions of managers of functional units

The managers of functional units must-

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

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>31 Agreements relating to functions

(1) Subject to section 28 (1) (b) (i), the MEC of a province may enter into an agreement with the chief executive officer in terms of which the Corporation must perform any stipulated function allocated to the MEC in terms of the National Road Traffic Act, 1996 (Act 93 of 1996), or any other law relating to road traffic, on behalf of the MEC.

(2) An agreement contemplated in subsection (1) comes into operation on the date of its publication in the *Gazette* and every *Provincial Gazette*.

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>32 National road traffic law enforcement code

(1) For the purpose of executing the road traffic law enforcement function, the chief executive officer, in consultation with the National Commissioner and the national organisation recognised in terms of section 2 (a) of the Organised Local Government Act, 1997 (Act 52 of 1997), must develop a national road traffic law enforcement code.

(2) The code must, taking into account local developmental needs, capacity and available

resources, provide a national framework that sets out in respect of road traffic law enforcement-

- (a) minimum requirements for training and appointment of road traffic law enforcement officers;
- (b) strategic direction and goals to be achieved;
- (c) management practices and human resource practices to be followed;
- (d) operating principles to be applied;
- (e) performance levels to be achieved;
- (f) supporting management information systems to be implemented; and
- (g) actions which constitute a failure to comply with the code as contemplated in section 33.

(3) A draft code must be published by notice in the *Gazette* and every *Provincial Gazette* and the notices must specify the time available to interested parties to comment.

(4) The chief executive officer, the National Commissioner and the national organisation recognised in terms of section 2 (a) of the Organised Local Government Act, 1997, must consider all comments before completing the code and submitting it to the Shareholders Committee for approval.

(5) The code, once approved by the Shareholders Committee, becomes binding on-

- (a) provincial authorities and local government bodies irrespective of whether they perform road traffic law enforcement services under a contract: Provided that the chief executive officer may not force a local government body that does not provide road traffic services, to provide those services; and
- (b) any statutory transport institution vested with powers to execute road traffic law enforcement functions for the duration of a contract concluded with the Corporation to provide road traffic law enforcement: Provided that the code may only bind the SAPS and a municipal police service established in terms of section 64 of the South African Police Service Act, 1995 (Act 68 of 1995), upon approval thereof by the Minister for Safety and Security.

(6) Every three years the code must, on the recommendation of the Shareholders Committee, be revised.

(7) Any revision of the code must be published in the *Gazette* and every *Provincial Gazette* for interested parties to comment on, whereupon subsection (4) applies with the necessary changes.

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>33 Non-compliance with national road traffic law enforcement code

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

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

and is entitled to all reasonable assistance by any member or employee of the provincial authority or local government body in question.

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

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

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

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

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

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

(6) A person appointed in terms of subsection (5) (a) may, subject to section 100 (2) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), exercise all the powers and must perform all the duties of the executive head of the provincial authority concerned.

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

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

(9) (a) If the MEC fails to intervene as requested, the Minister after a decision by the provincial executive may intervene as contemplated in section 100 of the Constitution of the Republic of South Africa, 1996, in which case subsections (12) to (16) apply with the necessary changes.

(b) For the purpose of this subsection, any reference in subsections (12) to (16) to-

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

(10) If the MEC is satisfied that a local government body has failed to comply with the national road traffic law enforcement code, he or she must notify the local government body of

such failure in writing and if the Shareholders Committee does not decide to exempt the local government body from compliance with the code, request compliance with that code within a period specified in the notice.

(11) The MEC may, on the request of the provincial authority, extend the period contemplated in subsection (10).

(12) The MEC may, where a local government body fails to comply with the national road traffic law enforcement code within the period specified in the notice or the extended period contemplated in subsection (11), and after consultation with-

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

(13) Where an administrator is appointed in terms of section 64N (4) (a) of the South African Police Service Act, 1995 (Act 68 of 1995), that administrator must perform the functions contemplated in subsection (12) (b) (i).

(14) A person appointed in terms of subsection (12) (b) (i) may, subject to section 139 (2) of the Constitution of the Republic of South Africa, 1996, exercise all the powers and must perform all the duties of the executive head of the local government body concerned.

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

(16) All expenditure incurred by or in connection with the Intervention of the MEC, in the provision of road traffic law enforcement as contemplated in this section, must be in accordance with the contract between the Corporation and the local government body in question.

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CHAPTER 5 PRIVATE INVESTMENT IN ROAD TRAFFIC (ss 34-37)

>34 Private investment

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 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.

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>35 Trading of shares

(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 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.

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>36 Joint equity venture

(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).

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>37 Road traffic facility and services investment contracts

(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.

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CHAPTER 6 CONTRACTING OUT TO PROVINCIAL AUTHORITIES AND LOCAL GOVERNMENT BODIES (s 38)

>38 Appointment of agents

(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 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 64 of the South African Police Service Act, 1995 (Act 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.

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CHAPTER 7 COMPLIANCE AND MONITORING (ss 39-42)

>39 Compliance, monitoring and regulatory approach

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

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

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

- (a) request the chief executive officer to report on compliance with the business and financial plan at intervals determined in the business and financial plan; and

- (b) respond to a complaint received from any person.

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

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>40 Monitoring duties and powers of chief executive officer

(1) The monitoring duties of the chief executive officer are to-

- (a) receive a complaint from any person regarding non-compliance as contemplated in section 41 and direct such complaint to the manager of the functional unit concerned for further action;
- (b) monitor, and report to the Shareholders Committee on, compliance by the Corporation with public service obligations, which include-

- (i) levels of public safety as described in the business and financial plan or the governance agreement, whichever is applicable;
 - (ii) quality and levels of service as described in that plan or that agreement, whichever is applicable; and
 - (iii) pricing of services as described in that plan or that agreement, whichever is applicable; and
- (c) monitor and report to the Shareholders Committee on-
- (i) the level of, and potential for further, private sector involvement in road traffic service provision;
 - (ii) the level of, and potential for further, involvement by provincial authorities and local government bodies in road traffic service provision;
 - (iii) the development of, and potential for, monopolistic practices arising from performance in terms of investment contracts, and strategies to discourage such or similar practices; and
 - (iv) the impact of the Corporation's activities on other transport modes and its contribution to modal complementarity.
- (2) The chief executive officer may-
- (a) request the manager of the functional unit concerned to report on compliance with the business and financial plan at intervals determined by the chief executive officer;
 - (b) respond to a complaint received from any person; and
 - (c) conduct an independent investigation, survey or audit.
- (3) The chief executive officer must, prior to conducting an audit in terms of subsection (1) (c), publish a notice in the media inviting any person or entity to provide written comments or suggestions regarding compliance.
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>41 Complaints to chief executive officer

(1) Any person or agent who is directly affected by-

- (a) discrimination or a discriminatory ruling by the manager of a functional unit;
- (b) failure on the part of the Corporation to execute its functions in accordance with the laws concerning road traffic; or
- (c) negligence on the part of the Corporation,

may lodge a complaint with the Minister, any MEC or the Shareholders Committee who must submit it to the chief executive officer.

(2) A complaint lodged in terms of subsection (1) must consist of a statement made under oath or a solemn declaration which details the nature or contents of the alleged discrimination, failure or negligence.

(3) The chief executive officer must investigate a complaint from any person regarding non-compliance by a manager of a functional unit or the Corporation if the allegations contained in that complaint constitute a *prima facie* case of discrimination, failure or negligence.

(4) The chief executive officer must notify the manager of the functional unit concerned of a complaint received with regard to that manager and of his or her intention to investigate any allegation of discrimination, failure or negligence.

(5) If subsequent to an investigation contemplated in subsection (3), the chief executive officer is of the opinion that the manager of the functional unit is guilty of such discrimination, failure or negligence, the chief executive officer, subject to subsection (6)-

- (a) must in writing direct the manager of the functional unit concerned to rectify the discrimination, failure or negligence within a reasonable time; and
- (b) may in writing direct the manager of the functional unit concerned to pay full or partial compensation for any monetary loss sustained by the person who has lodged the complaint.

(6) The chief executive officer may not act in terms of subsection (5) unless he or she has-

- (a) notified the manager of the functional unit concerned in writing of his or her intention to act in terms of that subsection and has informed the manager of all the relevant facts pertaining to the complaint lodged in terms of subsection (1); and
- (b) afforded the manager of the functional unit concerned the opportunity to make representations to him or her in respect of the discrimination, failure or negligence, within a reasonable time.

(7) Any person may submit information to the chief executive officer regarding the existence of any constraint which hinders investment in road traffic or which detrimentally affects the efficiency, affordability or safety of road traffic service provision.

(8) The chief executive officer must, on receipt of any information specified in subsection (7), submit a recommendation to the Shareholders Committee in this regard.

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>42 Contract compliance monitoring

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

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CHAPTER 8 MISCELLANEOUS (ss 43-53)

>43 Procurement

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

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>44 Consultation

The chief executive officer-

- (a) must, in support of the execution of the Corporation's functions, consult, on the request of the Shareholders Committee or the board or as the need arises, with other interested government departments, companies, agencies, local governments, private business or international authorities and relevant stakeholders; and
 - (b) may for that purpose develop and maintain appropriate stakeholder consultative networks and establish appropriate stakeholder consultative forums.
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>45 Innovation

(1) The Shareholders Committee must encourage innovative projects which entail technology transfers at the expiry of a concession period through-

- (a) the use of national goods and services;
- (b) training and employment of citizens; and
- (c) research and development.

(2) The Shareholders Committee may direct that any bidder, who in preparing a bid has undertaken innovative research which is useful, be reimbursed either partially or fully for bidding costs irrespective of whether the bid is successful or not.

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>46 Enquiries

(1) The chief executive officer may conduct any enquiry concerning road traffic, and must announce his or her intention to conduct an enquiry by publishing a notice in the *Gazette* and every *Provincial Gazette*-

- (a) indicating the time and place at which such enquiry will be conducted;
- (b) specifying the subject-matter of the enquiry; and
- (c) inviting interested persons to-
 - (i) submit written representations to the chief executive officer; or
 - (ii) indicate whether they wish to submit oral representations to the chief executive officer.

(2) Any written representation made by any person in pursuance of an invitation referred to in subsection (1) (c) (i) is open to inspection at the premises of the Corporation during normal business hours.

(3) A written representation referred to in subsection (2), or a certified copy thereof, must be furnished on request to any person after payment of the prescribed fee.

(4) The chief executive officer may cause a notice to be served on any person requiring such person to appear at a place and time specified in such notice for the purpose of an enquiry.

(5) The chief executive officer must conduct an enquiry-

- (a) in accordance with the prescribed procedure; and
- (b) in public, unless the Minister grants permission for an enquiry to be conducted *in camera*.

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

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

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

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

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

- (a) inform all interested parties that the request has been received; and
- (b) invite further representations from any party.

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

- (a) re-open the enquiry; or
 - (b) refuse the request and provide the applicant with written reasons for such refusal.
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>47 Right to review or appeal

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

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

- (a) confirm, vary or set aside the relevant decision of the chief executive officer or that employee, as the case may be;
- (b) give such other decision as the chief executive officer or that employee, as the case may be, was able to give; or
- (c) remit the case to the chief executive officer or that employee, as the case may be, with the instructions it thinks fit.

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

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

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>48 Regulations

(1) The Minister may, after consultation with the Shareholders Committee, make regulations relating to-

- (a) any matter which may or must be prescribed in terms of this Act;
- (b) subject to subsection (2), any monies that may be charged by the Corporation or that accrue to the Corporation in terms of this Act; and
- (c) any matter which is necessary to prescribe in order to achieve the objectives of this Act.

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

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

(4) A regulation-

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

publication as contemplated in paragraph (a) or, if the legislature is not then in session, at the commencement of its next ensuing session.

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>49 Restriction on use of name

No person may under a name containing the words 'Road Traffic Management Corporation' or the translation thereof in any other official language-

- (a) conduct his, her or its affairs or business or carry on his, her or its occupation or trade;
 - (b) be registered or licensed in terms of any legislation; or
 - (c) falsely claim to be acting on behalf of the Corporation.
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>50 Limitation of liability

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

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>51 Interim arrangements

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

- (a) the transfer to the Corporation of the assets, liabilities, rights or obligations contemplated in section 23 (2);
 - (b) the employment by the Corporation of officers of the national or provincial Departments as contemplated in section 23 (1) (b); and
 - (c) the commercialisation and setting up of functional units in respect of road traffic functions before the Corporation commences with the performance of its functions.
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>52 Offences

Any person who-

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

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

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>53 Short title and commencement

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

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

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