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Road Management Initiative
RMI



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SADC Model Legislative Provisions on Road Network Management and Financing

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The views expressed in this Technical Note are those of the author and in no way represent the official position of the SATCC-TU. This note has been prepared using the research of the drafting team responsible for the preparation of the model legislative provisions. Sandra J.H. Coetzee is managing director at Consilium Legis (Pty) Ltd. The author acknowledges with thanks the assistance of her colleagues, Rean Botha and Giorgio Radesich.

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In August 1996, the Heads of State of the Southern African Development Community (SADC) signed the Protocol on Transport, Communications and Meteorology ("Protocol"), which sets a broad framework of regional cooperation between the SADC Member States¹ in the fields of transport, communications and meteorology *infrastructure* and *services*. A primary objective of the Protocol is to promote the harmonization of

policy, legislation, and administrative practices between member states to improve good governance within those sectors.

Model Legislative Provisions on road network financing and management

In order to translate the words of the Protocol into practical and visible achievements, the Technical Unit of the Southern African Transport and

SADC PROTOCOL: A FRAMEWORK FOR ROAD SECTOR REFORM

The Protocol commits SADC states to the development of a harmonized regional road infrastructure policy. Features of the policy are:

- establishing accountable national roads authorities that represent the public and private sectors;
- introducing commercial roads management practices;
- developing and implementing cohesive road funding policies;
- securing dedicated funding sources and applying the user-pays principle progressively to recover full costs;
- promoting harmonized national and cross-border road user charging systems;
- applying the principle of non-discrimination between national and foreign users in regard to user charging;
- introducing efficiencies and cost savings through contracting out;
- defining and coordinating the development of the SADC Regional Trunk Road Network.



The MLP are complemented by a parallel initiative undertaken by the SATCC-TU to develop a harmonized framework for overloading control. In terms of this initiative, the efficacy of law enforcement will be improved through mechanisms to commercialize overloading management, i.e., through concessioning of weighing stations, to decriminalize overloading and to introduce a system of targeted incentives aimed at promoting higher levels of compliance. Methods to optimize resources through co-operation between two or more states in providing jointly-managed weighing stations are also proposed.

Telecommunications Commission (SATCC-TU) developed model legislative provisions (MLP) on *Road Network Financing and Management*. This complements the MLP on *Investment in Transport* (ITA), which was prepared as holistic investment legislation addressing all aspects of planning, facilitation and regulation of private transport infrastructure and services investment.

Regional reality: the reform context

Good governance in the roads sector boils down to ensuring *accountability* and *integrity* in the management of public money and ensuring that that money is spent wisely. While these challenges are simple to formulate, their implementation poses significant hurdles. In the SADC region, policy reforms to place road management and financing on a commercial basis have gained wide acceptance. This includes recognizing the need to introduce user charging as well as foster transparency in roads revenue. Modest reforms have been initiated, but against a backdrop of extensive, across the board public sector reform, which poses huge management challenges. Many states are still grappling with ways to ensure that these policies ultimately benefit their economies. The drafting of the MLP had to avoid an approach that would over-

Most SADC governments face similar implementation constraints, e.g. small income bases and a high reliance on external (donor) funding, lack of institutional capacity to absorb reforms and manage transition, inexperience with regulatory functions and the need to encourage appropriation of reforms by existing administrators and stakeholders.

whelm the capacity of government and civil society to realize the reforms. *Progressive implementation* is likely to be the norm. While reforms span policy, institutional and procedural issues, it is clear that key guarantees must be put in place if benefits of the reform process are to be secured.

An institutional framework for roads

The MLP create an institutional framework that addresses three main areas. The MLP vest general responsibility for policy formulation in the minister responsible for roads. A Ministers Committee is established as a policy coordination forum in regard to national, regional, and local road authorities. The committee comprises, in addition to the minister responsible for roads, the Minister of Finance, the minister responsible for provincial or local affairs, and any other minister whose portfolio is relevant to roads. The Ministers Committee is also a mechanism for concurrent decision-making and coordination of the various roads authorities.

Road Fund

The MLP establish an arms-length agency responsible for road financing (Road Fund) that has legal authority. The Road Fund is overseen by a majority private sector board and managed on a day-to-day basis by a full-time manager in the person of a fund director, who is appointed by and answers to the board chaired by a non-executive chairperson. The fund enjoys complete autonomy as a commercial agency. As part of its function the fund (a) channels all revenues destined for roads; (b) disburses funds to roads authorities; and (c) audits compliance by roads authorities with financing conditions.

Roads Agency

The MLP also establish a Roads Agency as an arms-length service delivery institution. It enjoys the same status as the Road Fund and enjoys the same basic commercial freedoms. The Roads Agency is also overseen by a majority private sector board and managed on a day-to-day basis by a full-time manager in the person of a chief executive officer. In line with the approach followed in re-

spect of the fund, the chief executive officer is also appointed by the board and answers directly to the board, which is chaired by a non-executive chairperson. The agency is the planning agent in development of the road network and acts as service provider of road infrastructure. The agency may also act as contractor with other (private) service providers or as concessionaire to a private service provider.²

A framework for good governance in roads

The MLP introduce a framework for good governance that (a) democratizes decision-making by involving all stakeholders (public and private); (b) ensures stable funding flows; (c) creates effective road management and financial planning frameworks; and (d) enhances the delivery of road services.

Democratizing decision-making

Traditionally, decision-making in roads financing and operations have left little, if any, scope for input from road users or the general public. Decision-making has also been fragmented by a lack of coordination between authorities responsible for roads. The MLP introduce a radical departure from this approach:

- Roads institutions are established in which private sector interests, especially road user interests, are entrenched through representation on management boards.
- Coordination mechanisms are introduced to ensure appropriate consultation between national and other roads authorities.
- The role of road users and the general public in influencing planning is expanded by requiring public consultation—e.g., in regard to the appointment of board members or the imposition of road user charges.

- Decision-making, accountability, and transparency are strengthened by requiring regular reporting and publication—e.g., the submission of an annual report to the legislature.

Stable funding

The MLP clearly identify revenue sources, with user charging accepted as the primary source of revenue (others include parliamentary appropriations, donor credits, fuel levies, fines). Revenues derived from separate sources must be managed in separate accounts. Clear procedures ensure that a transparent procedure is followed in introducing or adjusting road user charges. Detailed criteria determine the level of a charge.

The MLP imposes equitable procedures in the disbursement of funds between road authorities. The fund director must develop an annual disbursement formula that

must be approved by the board based on criteria in the MLP

The MLP require public consultation before a road user charge may be introduced or amended. The board must report to the minister how any comments received have been accommodated.

Effective planning

The MLP introduce a clear performance measurement based on integrated multi-year planning frameworks. These move away from traditional civil service management procedures and introduce appropriate commercial planning practices. The agency’s chief executive officer must prepare a road network management plan, for approval by the board, that contains: (a) a road development program; (b) an allocation of projects between private contractors and the force account; (c) estimated funding requirements; and (d) a procurement schedule and a personnel rationalization strategy (setting out the program for the phasing out of force-account operations).

The chief executive officer must also consult the fund director about the preparation of the plan. In turn, the fund director prepares a financial plan that (a) estimates income and expenditure, current rev-

The MLP require majority representation by the private sector on the Road Fund and Roads Agency boards. Nominations for membership from the general public and specific user organizations are required to limit political interference, while the expertise required of board members to ensure representation and a high standard of decision-making is prescribed. Persons with potential conflicts of interest or who may otherwise be inappropriate are disqualified. The autonomy of the boards is enhanced by prescribing limited grounds on which board membership may be terminated and clearly spelling out the procedures in the event of dismissals.

enue sources and projected revenues from each source (and options to diversify revenues); (b) distinguishes operational and administrative costs; and (c) indicates investment policies and current balances in fund accounts. In addition, a joint technical committee must be established between the Roads Agency and other roads authorities to coordinating the preparation of each of their management plans.

Accommodating the need for a transitional model

Given regional realities, the drafting team thought it worthwhile to provide an alternative model that permits the creation of a single board to oversee the operations of both the Road Fund and the Road Agency. In creating this option, the drafting team tried to ensure that this option retained essential good governance guarantees. The single board option consolidates the decision-making functions of two boards in one body, but does not imply a wholesale amalgamation of institutions or statutory functions. A Road Fund and Roads Agency are still retained as legally distinct and autonomous institutions

The transitional model differs from the final model in that only one board is created. This is motivated primarily by the lack of available persons with the expertise to serve on one, let alone, two boards.

reporting to separate managers. The members of a single board comprise all those persons who would otherwise have served on separate Road Fund and Roads Agency boards. To protect the integrity of financial decision-making, a sub-committee of the board should be established, so that the roles of the board may remain distinct.

The implementation challenge

Several factors are essential for the successful implementation of the MLP. Roads institutions must implement effective road network management and financial planning to reverse the legacy of insufficient funding and inadequate service delivery. Decision-making must be open to ensure effective planning and wide-spread stakeholder support. Wide and continuous consultation will further bolster this objective. Finally, effective monitoring and audit procedures will ensure that compliance is objectively assessed and, where necessary, corrective action can be taken.

¹ Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. The Democratic Republic of Congo have been admitted, but do not yet actively participate in SADC transport activities. Accession procedures are still underway in the Seychelles.

² The freedom enjoyed by the Agency would even extend, for example, to taking up equity in a road-related enterprise, e.g. a BOT company that has received a concession.

Road Management Initiative

The RMI was launched in 1988 by the United Nations Economic Commission for Africa (UNECA) and the World Bank, under the auspices of the Sub-Saharan Africa Transport Policy Program (SSATP). The countries taking part in the RMI are Cameroon, Kenya, Madagascar, Rwanda, Tanzania, Uganda, Zambia, and Zimbabwe. Others receiving assistance from the program include Benin, Ethiopia, Ghana, Lesotho, Malawi, Mozambique, and Togo. RMI is administered by the World Bank's Africa Region, and is co-financed with the governments of Denmark, France, Germany, Japan, the Netherlands, Sweden, Switzerland, and the European Union. France, Japan and Norway provide senior staff members to work on the Program.