

**COMESA-EAC- SADC TRIPARTITE  
CROSS-BORDER ROAD TRANSPORT**

**MODEL LAW**

Version 3 Draft 1

2018-10-06

# CROSS-BORDER ROAD TRANSPORT BILL

*(As introduced in the [Enter Country Specific Reference Here].)*

(MINISTER OF *[Enter Country Specific Reference Here]*)

[B Enter bill number here. – 2018]

# BILL

**To regulate cross-border road transport in the COMESA-EAC-SADC Tripartite Region subject to the Agreement between the Tripartite Member States concluded for that purpose; to provide for quality regulation as the basis for regional cross-border road transport regulation instead of quantity regulation; to allow for operators of Member States of the Tripartite Region to undertake cross-border road transport in the territories of the other Member States; to provide for a harmonised and integrated Operator Registration System between the Member States; to provide for standardised registration and fitness requirements of vehicles owned or operated by registered transport operators in the Region and for the registration of drivers employed used by such operators; and to provide for matters connected therewith;**

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BE IT ENACTED by the Parliament of *Insert Country name* as follows:

## CHAPTER I: INTRODUCTORY PROVISIONS

### 1 Definitions

In this Act the following words and expressions have the meanings assigned to them below, unless the context indicates otherwise, and—

**“Administrative Appeals Committee or “Committee”** ” means the Administrative Appeals Committee established in terms of section 18;

**“Agreement”** means the Tripartite Multilateral Cross-Border Road Transport Agreement acceded to by the various Member States and includes the Schedules to that Agreement;

**“authorised officer”** means a *[include reference to relevant officer]* appointed in terms of section *[include reference to the section and the law in terms of which the relevant officer has been appointed]*

**“cabotage”** means transport undertaken on a public road by a transport operator with a vehicle not registered in the country in which such transport is undertaken,  
and includes—

- (a) the loading and unloading of passengers and goods between two points in that country,

but excludes—

- (b) the loading of passengers or goods in such country for conveyance to another country which is not the state of registration of the vehicle and where such country of registration is not traversed;

**“combination of vehicles”** means coupled vehicles which travel on the road as a unit;

**“Commission”** means the Tripartite Cross-Border Road Transport Commission established in terms of article 4 of the Agreement;

**“Competent Authority”** means the authority or body of persons designated or appointed by the Minister by notice in the *Government Gazette* in terms of section 3 to perform the transport operator registration functions in terms of article 6 of the Agreement and manage the Operator Registration System;

**“cross-border road freight transport”** means transporting freight between two or more Member States or within the territory of a Member State which is not the state of registration of the operator, by means of a vehicle which exceeds a maximum gross vehicle mass of 3 500 kilograms;

**“cross-border road passenger transport”** means transporting passengers and their personal effects by road by means of a vehicle which exceeds a maximum gross vehicle mass of 3 500 kilograms or in the case of a vehicle not exceeding 3 500 kilograms, transporting passengers for a fare or other consideration or reward between two or more Member States or within the territory of a Member State which is not the state of registration of the operator, by means of a vehicle which is designed or adapted to carry more than eight persons in addition to the driver;

**“cross-border road transport”** includes cross-border road passenger transport and cross-border road freight transport;

**“foreign operator”** means an operator who undertakes cross-border road transport with a vehicle in a Member State other than the state of registration of that vehicle;

**“Member States”** means the States who have acceded to the Agreement;

**“Minister”** means the Minister responsible for transport matters; *[to be changed according to the designation and institutional arrangements in the country concerned]*

**“motor vehicle”** means—

- (a) in relation to freight any self-propelled vehicle, including a trailer, with a gross vehicle mass of more than 3 500 kilograms, and
- (b) in relation to passengers, a self-propelled vehicle that is designed or adapted to carry more than eight persons, in addition to the driver;

**“National Transport Information System”** means the domestic electronic information system or collective of electronic information systems that are inter-linked for purposes of verification of information recorded amongst the systems used, including—

- (a) an Operator Registration System to record details of operators, their registration and grading status, their depots, details of drivers and their professional status, and details of the vehicles used, as well as to record details of responsible competent persons and their registration status, and
- (b) a Transgression System to record details of the transgression records and demerit points relating to operators, responsible competent persons and drivers, together with details of the vehicles involved;
- (c) a Vehicle System to record details of vehicles, the title and ownership of vehicles, the compulsory licence fees or road taxes, roadworthiness testing and 3<sup>rd</sup> Party Insurance; and

- (d) a Driver System to record details of drivers, the compulsory training, learner testing, driver testing and professional driver testing, together with the authorised categories;

**“operator”** means a person who undertakes cross-border road transport and is registered in terms of section 4;

**“operator disc”** means a sticker, decal or other distinguishing mark to be affixed to vehicles operated by registered operators to identify the vehicle as being so operated;

**“PrDP”** means professional driving permit; *[Note: some countries do not permit acronyms in legislation. If so, the acronyms have to be written out in full]*

**“prescribed”** means prescribed by the Minister by regulation *[or statutory instrument- insert the term used in the specific country for subsidiary/delegated legislation issued by the Minister];*

**“responsible competent person”** means the duly registered person appointed by an operator to represent it and act as proxy for the operator for all purposes of this Act as well as other road transport and traffic legislation and any other relevant legislation;

**“this Act”** includes any regulation *[or statutory instrument]* issued in terms of this Act;

**“Tripartite Region”** means the territories of the Member States as contemplated in the Agreement;

**“TRIPS”** means the Transport Register Information and Platform System established for the Tripartite Region and managed by the Commission to facilitate the recording and accessing of information on the National Transport Information Systems of the Member States, and

**“vehicle”** means a motor vehicle designed or adapted principally to travel on wheels and includes a combination of vehicles being coupled vehicles which travel on a road as a unit.

## **2 Purpose of this Act**

The purpose of this Act is to regulate cross-border road transport operations to implement the provisions of the Agreement, and without derogating from the generality of the foregoing to—

(1) move from quantity regulation to quality regulation of operations of cross-border road transport in Member States that have not already done so;

(2) regulate the movement of such operators between and in transit through the territories of the Member States and to regulate access to transportation in the territories of the Member States;

(3) establish a harmonised and integrated operator registration system;

(4) provide for the issuing of cross-border operations identification discs and electronic monitoring devices to operators of cross-border road transport and cabotage;

(5) provide for the grading of such operators;

(6) facilitate procedures for law enforcement in relation to operators and drivers in respect of cross-border road transport and cabotage given the proposed violations administration system, and

(7) facilitate the monitoring system to record offences and violations by operators and drivers and the penalty points system established by the Road Traffic and Transport Transgressions Act.

### **3 Administration of Act**

(1) The Minister must, by notice in the *Government Gazette*, appoint or designate an authority or a body of persons as the Competent Authority as contemplated in the Agreement.

(2) The Competent Authority referred to in subsection (1), must manage the Operator Registration System and perform the functions as contemplated in the Agreement and this Act.

(3) Notwithstanding the provision of subsection (2), the Competent Authority may enter into an agreement with any person or body of persons to perform any duty or function in terms of this Act.

(4) A person or body of persons with whom the Competent Authority has entered into an agreement in terms of subsection (3) may exercise any power given to the Competent Authority in terms of this Act, in accordance with the agreement referred to in subsection (3).

## CHAPTER II: REGISTRATION OF OPERATORS

### 4 Application for registration and renewal of registration as operator

(1) Every operator undertaking cross-border road transport must apply to the Competent Authority for registration as an operator in the prescribed manner.

(2) An application for registration must be accompanied by the prescribed information and documents and the prescribed application fee.

(3) The Competent Authority on receiving such an application must record the application in the National Transport Information System and issue a receipt to the applicant.

(4) Should the application be defective, or lack required documentation, or should the applicant not be aware of the requirements for registration, the Competent Authority must refuse to accept the application and advise the applicant of the requirements and assist him, her or it to lodge a complete application.

(5) The requirements for registration shall be as prescribed, and must include—

- (a) evaluation of the operator as a fit and proper person to undertake cross-border road transport, by virtue of the operator's record of transgressions and demerit points and other factors considered relevant by the Competent Authority;
- (b) in the case of transporters of dangerous goods, that the operator and his, her or its vehicles, facilities and operations have been audited for compliance in the prescribed manner with the standard titled STANS: The Transportation of Dangerous Goods by Road;
- (c) meeting the other prescribed technical requirements, and
- (d) having access to acceptable vehicles, maintenance facilities and drivers.

(6) Should the applicant meet the requirements, the Competent Authority must register the operator on the National Transport Information System and issue to the applicant a certificate of registration in the prescribed format and an operator disc for each vehicle operated by the operator and must ensure that such details are accessible by TRIPS, in the prescribed manner.

(7) Every registered operator must apply annually or at other prescribed intervals for new operator discs for the vehicles operated by that operator in the prescribed manner and on payment of the prescribed application fee.

(8) An application for new operator discs under subsection (7) must be accompanied by details of any changes to the information contemplated in subsection (2).

(9) On receipt of such an application with complete information the Competent Authority must note any change of information on the National Transport Information System and issue an operator disc for each vehicle recorded by the operator valid for one year or for such other period as may be prescribed, or where applicable inform the operator of further information that it may require.

(10) Every registered operator must apply to renew his, her or its registration every five years in the prescribed manner and on payment of the prescribed fees, when the Competent Authority must undertake a full re-evaluation of the factors contemplated in subsection (5).

(11) If the applicant still complies with the applicable requirements, the Competent Authority must renew the registration of the operator if satisfied that the information submitted by the applicant is complete and up to date, and that the applicant still has an acceptable of transgressions and demerit points.

(12) On renewal of an operator's registration, the Competent Authority must record such registration on the National Transport Information System and issue an operator disc for each vehicle recorded by the operator, or if the operator does not so qualify, refuse the application for renewal of registration, and in either case inform the operator of its decision.

(13) As from a date to be determined by the Minister by notice in the Government Gazette, no operator may undertake cross-border road transport without being registered in terms of this section.

## **5 Duties of operators**

Every registered operator must—

- (a) apply the highest standards of professionalism as a provider of cross-border road transport when undertaking such transport;
- (b) ensure that all drivers employed or used by him, her or it are in possession of a valid PrDP at all times when driving a vehicle in the course of such transport;
- (c) ensure that all vehicles operated by him, her or it are properly licensed and roadworthy and display the required operator disc at all times when driving a vehicle in the course of such transport;
- (d) ensure that he, she or it has notified the Competent Authority of a

duly registered responsible competent person employed by him, her or it, subject to section 6(4), and

- (e) comply with all other requirements of this Act and the Agreement.

## **6 Responsible competent person**

(1) Every person desirous to perform the duties of a responsible competent person must register with the Competent Authority as such a person in the prescribed manner.

(2) To obtain registration, a responsible competent person must be in possession of the qualifications and experience approved by the Commission, as prescribed.

(3) On confirmation that the applicant complies with the prescribed requirements, the Competent Authority must register the applicant as a responsible competent person and issue a registration certificate to the applicant in the prescribed manner.

(4) Regulations made under this section may provide for provisional registration of responsible competent persons who do not fully meet all of the requirements for registration for a period not exceeding that which may be prescribed, on condition that such a person fully complies within the prescribed period.

(5) Subject to subsection (3), every registered operator must on application for registration as such an operator and on renewal of such registration, identify a duly registered responsible competent person or proof that such person has applied for registration as such, and notify the Competent Authority in writing of the name, contact details and other particulars of such person as prescribed.

(6) Any act or omission of the responsible competent person of an operator is deemed to be an act or omission of the operator for purposes of this Act, the Road Traffic and Transport Transgressions Act [*insert reference*], the Road Traffic Act [*insert correct reference*], the Vehicle Load Management Act, [*insert correct reference*], the Transport of Dangerous Goods by Road Act [*insert correct reference*] and where applicable, the Criminal Procedure Act [*insert correct reference*].

(7) The responsible competent person must faithfully and diligently carry out the duties assigned to such person by this Act and the Agreement in relation to the operator.

(8) As from a date to be determined by the Minister by notice in the Government Gazette, no one may act as a responsible competent person in terms of this Act unless registered or provisionally registered as such with the Competent Authority.

## **7 Operator discs and electronic monitoring of vehicles**

(1) Registered operators wishing to provide cross-border road transport or cabotage must apply to the competent authority for the issuing to them of an operator disc for each vehicle to be used for such transport.

(2) Operator discs must be renewed annually when the operator applies for registration or renewal or registration, or at such other intervals as prescribed, provided that the operator still complies with the requirements for registration as well as other prescribed requirements.

(3) Operator discs must be issued in the prescribed manner.

(4) Operator discs must—

(a) be bar coded or otherwise designed to enable authorised officers to determine summarily by means of the National Transport Information System as well as TRIPS whether the vehicle is compliant with this Act, other applicable legislation and the Agreement, and is being operated by the relevant operator;

(b) display the name of the operator and his, her or its registration number with two-prefix letters indicating the State of registration of the operator, the date of expiry of the disc and the prescribed details of the vehicle, and

(c) prominently display the date of expiry of the disc for ease of law enforcement.

(5) An operator disc must be affixed to the vehicle to which it relates in the prescribed manner and remain so affixed while cross-border road transport is undertaken by that vehicle.

(6) When an operator disc is lost or destroyed or becomes illegible, the operator must apply for a duplicate disc in the prescribed manner and on payment of the prescribed fee.

(7) As from a date to be determined by the Minister by notice in the Government Gazette, vehicles used for cross-border road transport must be fitted with an electronic device that is capable of determining the position or route of the vehicle at any time while it is so operated.

(8) The Minister may prescribe—

(a) the nature of the device contemplated in subsection (7) and the manner in which it must be affixed to the vehicle;

- (b) procedures for applying for such a device and application fees; and
- (c) duties of the competent authority or other authorities to monitor routes and other information from the device for purposes including, but not limited to, transport planning, determining routes for dangerous goods transport, traffic control or regulation and protection of road surfaces or the collection of travelling distance charges.

## **8 Recording of vehicles operated by operator**

(1) Every registered operator must supply the Competent Authority with a list of vehicles owned or operated by that operator for cross-border road transport with information on the physical address of the depot or operations centre and the location where the vehicle will be maintained and parked, as well as other prescribed information.

(2) The operator must supply details of the maintenance record of each vehicle by service centres approved by the manufacturer of the vehicle or by suitably qualified staff of the operator in workshops or other facilities that have been inspected or approved by the competent authority.

(3) When new vehicles are acquired by a registered operator, that operator must supply the prescribed details of those vehicles to the competent authority within the prescribed time, upon which that authority must record the details of the vehicle in the Operator Registration System and supply an operator disc for the vehicle to the operator.

(4) Where the operator does not own the vehicle used for such transport, the operator must supply the competent authority with an affidavit or other prescribed document from the owner authorising the use of the vehicle.

(5) All vehicles owned or operated by an operator are deemed to be controlled by the responsible competent person of that operator.

## **9 Recording of drivers employed or used by operator**

(1) Every driver employed or used by an operator for cross-border road transport must hold a professional driving permit as required by the Road Traffic Act [*insert name of the Act in the Member State*]

(2) Every registered operator must supply the Competent Authority with a list of

drivers employed or used by that operator for such transport with information on the physical address of the depot or operations centre and the location where the driver will be based, as well as other prescribed information.

(3) On employing or using any new driver the operator must supply the prescribed details of that driver to the competent authority within the prescribed time, upon which that authority must record the details of the driver in the systems.

(4) All drivers employed or used by an operator are under the supervision of the responsible competent person of the operator.

## **10 Operating standards**

(1) Registered operators must comply with this Act and all applicable traffic and transport laws, as well as operating standards specified in Schedule E of the Agreement. [Alternatively refer to the operating standards as adopted in domestic legislation]

(2) The Minister may prescribe sanctions or penalties for failure to comply with subsection (1).

## **11 Exemptions**

(1) A registered operator may apply to the Competent Authority in the prescribed manner and on payment of the prescribed application fee for exemption from any of the operating standards contemplated in section 9 or from any other requirements imposed by the Agreement.

(2) In evaluating applications for exemption, the competent authority must apply the criteria developed by the Commission and published under .....

## **12 Protection of information**

(1) Information obtained from owners, operators, responsible persons and drivers for purposes of this Act may be used only for the purposes of this Act and other traffic and transport legislation or for research or statistical purposes in order to implement such legislation and the Agreement.

(2) Where information obtained from operators, responsible competent person and drivers in terms of this Act is used for research or statistical purposes, that information must remain anonymous, not revealing the identity of the owner, operator, driver or responsible

competent person to any other person.

(3) The competent authority must keep such information secure and not allow it to be given out or used for purposes other than that contemplated in subsection (1).

(4) Operators and drivers must be allowed access to such information in the prescribed manner to ensure that it is correct and up to date.

(5) Information held on operators and drivers must be deleted once it is no longer required for the purposes contemplated in this section, unless it is used anonymously for the purpose of research and planning.

## CHAPTER III: GRADING OF OPERATORS

### 13 Application for grading

(1) A registered operator may apply to the Competent Authority for grading as an operator in one of the prescribed categories.

(2) An application under subsection (1) must be made in the prescribed manner and be accompanied by the prescribed application fee and a written commitment by the operator to comply with all relevant road traffic and transport laws of the State of registration and of all other Member States.

(3) On receipt of an application the Competent Authority must evaluate the application and grade the operator in the appropriate category if it is satisfied that—

- (a) the applicant is a fit and proper person to undertake cross-border road transport ;
- (b) the vehicles operated by the applicant for such transport are properly licensed and certified to be roadworthy and are regularly maintained and serviced;
- (c) where relevant, the depots, workshops and other facilities of the operator are acceptable;
- (d) the drivers employed or used by the applicant for such transport hold the required PrDPs and have an acceptable record of transgressions for road traffic and transport violations and other relevant offences such as trafficking in persons or drugs;
- (e) where relevant, that the applicant has an acceptable record of transporting dangerous goods and his, her or its vehicles and facilities have been inspected for compliance with the standard mentioned in section 4(5)(b);
- (f) the applicant complies with labour laws of the state of registration, including driving hours and rest periods;
- (g) the applicant has sufficient and properly qualified back-up and administrative staff and facilities to run his, her or its transport business;
- (h) if so prescribed, that the operator or his, her or its drivers have completed the prescribed training courses and

- (i) the applicant has complied with any other prescribed requirement or any additional requirement imposed by the competent authority.

(4) The Minister may make regulations providing that operators, once graded, must re-apply for grading annually or at other intervals to be prescribed, to ensure ongoing compliance by the operator with grading requirements and standards, and such regulations may also prescribe that the grading of an operator will lapse should the operator fail to re-apply or fail to comply with such standards and requirements on re-application.

(5) An operator may apply in the prescribed manner and on payment of the prescribed fee for amendment of his, her or its grading status.

(6) On receipt of an application under subsection (5) the Competent Authority must consider the application in the light of the matters mentioned in subsection (3) and may grant or refuse the application.

#### **14 Grading of operators**

(1) On granting an application for grading or regrading under section 12, the competent authority must register the applicant as a graded operator in the prescribed category in the Operator Registration System and issue a grading certificate to the applicant with an operator disc for each vehicle operated by that operator indicating that the operator has been so graded.

(2) The grading of the operator must also be recorded on the Operator Registration System and be accessible by TRIPS.

(3) A graded operator is entitled to the prescribed benefits and exemptions appropriate to the grade in which that operator is registered.

#### **15 Cancellation or amendment of grading status**

(1) The competent authority may cancel the grading of an operator or amend that operator's grading status if it comes to the knowledge of such authority that the operator no longer complies with the requirements for grading, or for grading in the relevant category, as contemplated in section 12 or that—

- (a) the operator has provided false or misleading information to the competent authority in the application form for registration or grading or at any other time;

- (b) based on inspections or repeated road traffic accidents, it appears that the operator is failing to maintain his, her or its vehicles in a satisfactory condition or is failing to employ drivers with the required PrDPs;
- (c) in the case of dangerous good transport, that the operator no longer complies with the standard mentioned in section 4(1)(b);
- (d) based on complaints from passengers, consigners, consignees or other interested persons the operator is not a fit and proper person to provide the relevant transport;
- (e) the operator's grading has lapsed in terms of regulations made under section 12(4);
- (f) the operator has committed repeated road traffic and transport transgressions as prescribed;
- (g) the operator has failed to comply with any other prescribed requirement.

(2) Before taking a decision to cancel or amend an operator's grading, the competent authority must—

- (a) give the operator written notice of the reasons why it intends to do so;
- (b) give the operator reasonable time to submit written representations or comments as to why the grading should not be cancelled or amended, and
- (c) consider any such representations or comments that have been submitted.

(3) On cancellation of an operator's grading, the competent authority must cancel the operator's grading in the Operator Registration System and request the operator to submit his, her or its grading certificate and grading operator discs to that authority for cancellation.

(4) On amendment of an operator's grading the competent authority must amend the operator's grading status in the Operator Registration System and request the operator to submit his, her or its grading certificate and grading operator discs to that authority for cancellation and issuing of a new grading certificate and operator disc to reflect the amendment.

## CHAPTER IV: INFORMATION SYSTEMS

### 16 Information systems

(1) The Minister must establish and maintain the National Transport Information System as an electronic system or collective or electronic systems to record details as defined and enable the recording and verification in the Operator Registration System of—

- (a) operators and their registration and grading status, as well as their depots;
- (b) responsible competent persons and their registration status;
- (c) operator, responsible competent person and driver transgression records and demerit points,
- (d) drivers employed or used for cross-border road transport and their professional status, and
- (e) vehicles operated for cross-border road transport and cabotage.

(2) The competent authority must manage and regularly update the Operator Registration System.

(3) The authorities as prescribed must record the prescribed information in the National Transport Information System within the prescribed times.

(4) The Minister or competent authority may in writing request any of the authorities referred to in subsection (3) to provide them with information required for inclusion in the National Transport Information System, and those authorities must comply with the request within the prescribed time.

(5) The competent authority must ensure that information on the National Transport Information System is accessible by TRIPS in order to comply with the obligations of the Agreement in that regard.

(6) The National Transport Information System must be interoperable with TRIPS.

## CHAPTER V: INSURANCE

### 17 Operators to have insurance cover

(1) Every registered operator who undertakes cross-border road transport must have motor vehicle liability insurance cover as prescribed with a primary insurance company in terms of an insurance scheme that is approved by the Commission.

(2) Operators contemplated in subsection (1) must have comprehensive insurance which includes cover for the prescribed insurable interests or risks.

(3) Such insurance must provide cover in all of the Member States regardless of the Member State in which the operator was operating at the time when the relevant claim arises.

(4) Operators contemplated in subsection (1) must apply to the [Insert reference to the entity in the country that administers the insurance system] in the prescribed manner for issuing to them of a document, sticker or other distinguishing mark for each vehicle so operated by that operator certifying that the operator has the required insurance cover.

(5) An application under subsection (3) must be made in the prescribed manner and be accompanied by the prescribed proof of such insurance as well as the prescribed application fee.

(6) The document, sticker or other distinguishing mark contemplated in subsection (3) must be kept in or displayed on every vehicle undertaking cross-border road transport in the prescribed manner.

## CHAPTER VI: APPEALS

### 18 Appeals

Where an operator is aggrieved by any act, direction or decision of the competent authority relating to the registration or grading of such operator, the operator may appeal within the prescribed time, in the prescribed manner and on payment of the prescribed fee, to the Administrative Appeals Committee [*insert name if such a tribunal exists in the country*].

### 19 Administrative Appeals Committee [only necessary if such a tribunal does not exist in the relevant Member State]

- (1) The Minister must establish an Administrative Appeals Committee.
- (2) The Committee consists of not more than .... and not less than .... members appointed by the Minister who are qualified by virtue of their knowledge of or education or experience in road traffic or transport matters, commercial or legal matters or other relevant matters.
- (3) The Minister must appoint a chairperson and deputy chairperson of the Committee from among its members.
- (4) If the chairperson is absent or unable to act as chairperson for any reason, the deputy chairperson must act as chairperson.
- (5) A person may not be a member of the Committee if he or she—
  - (a) is an unrehabilitated insolvent;
  - (b) has been removed from public office for any reason, or
  - (c) has been convicted of any offence involving dishonesty.
- (6) The conditions of appointment and terms of office of Committee members shall be as prescribed.
- (7) A person ceases to be a Committee member if he or she is subject to a disqualification mentioned in subsection (5) and is removed from office by the Minister, or if the member resigns on giving not less than one month's written notice to the Minister.
- (8) The Minister may also remove a Committee member from office for misconduct, where the member fails to perform the duties of a member diligently and efficiently, or if the member becomes incapable of performing such duties or doing so effectively.
- (9) The Minister must fulfil vacancies in the office of a member of the Committee

through appointing another member in terms of subsection (2).

(10) The Committee must determine the days, hours and places of its meetings.

(11) At least fifty percent of members of the Committee must be present at a meeting to constitute a quorum, and in the event of an equality of votes the person presiding at the meeting will have a casting vote in addition to his or her deliberative vote.

(12) No decision of the Committee will be invalid merely because of a vacancy on the Committee or that any person not entitled to attend a meeting sat as a member at the time the decision was taken, if the decision was taken by the majority of the members present who were entitled to sit as members.

## **20 Decisions of Committee and procedures for hearing appeals**

(1) The Committee must consider appeals noted with it and may—

(a) dismiss the appeal and confirm the act, direction or decision appealed against, or

(b) uphold the appeal, set aside the act, direction or decision appealed against and—

(i) substitute therefor any act, direction or decision which the competent authority could have performed or given, or

(ii) refer the matter giving rise to the appeal to the competent authority for reconsideration, or

(iii) uphold the appeal partially and vary the act, direction or decision appealed against.

(2) An act, direction or decision of the Committee under subsection (1)(b)(i) or (iii) is deemed to be an act, direction or decision of the competent authority.

(3) The Committee must cause the parties involved in the appeal to be notified in writing of its decision within the prescribed period and must furnish any person whose rights have been affected by the said act, direction or decision on written request with written reasons for the decision within the prescribed period.

(4) The procedures to be followed by the Committee for conducting hearings and considering evidence shall be as prescribed.

(5) The Committee may, in the prescribed manner and after following the prescribed procedures, summons any person to appear before it or to produce any document or

object in their possession or under their control that is relevant to the appeal.

(6) The law relating to privilege as applicable to a witness summonsed to give evidence or to produce any document or object before a court of law will apply in respect of the questioning of any person or in producing any document or object before the Committee.

## CHAPTER VII: GENERAL PROVISIONS

### 21 Cabotage prohibited

- (1) An operator registered in *[insert country name]* is prohibited from undertaking cabotage in any other country.
- (2) A foreign operator is prohibited from committing cabotage within *[insert country name]*.

### 22 Offences and penalties

- (1) Any person who—
  - (a) has been duly summonsed under section 19(5) and who fails without sufficient cause to attend at the time and place specified in the summons or to remain in attendance until excused by the Administrative Appeals Committee from further attendance;
  - (b) has been so summonsed and refused to be sworn or to make an affirmation as a witness;
  - (c) fails without sufficient cause to answer fully and satisfactorily any question lawfully put to him or her or to produce any document or object in terms of section 19(5);
  - (d) with intent to deceive the Administrative Appeals Committee, produces before that Committee any false or fabricated document;
  - (e) wilfully furnishes that Committee with false or misleading information, or
  - (f) undertakes cabotage in the territory of any Member State,

commits an offence and is liable on conviction to a fine in an amount not exceeding ..... or to imprisonment for a period not exceeding .... months or to both such fine and imprisonment.

### 23 Regulations [change to “statutory instruments” or other terminology as applicable in the relevant state]

- (1) The Minister may make regulations on any matter which may or must be prescribed by way of regulation in terms of this Act.

- (2) Before making any regulations in terms of this Act the Minister must—
  - (a) consult the Commission, and
  - (b) publish a draft of such regulations for comment in the Government Gazette, and

must consider any comments received from the Commission, or in response to publication of the draft, before making the regulations.

#### **24 Repeal and amendment of laws**

The laws mentioned in the first column of the Schedule are hereby repealed or amended to the extent specified in the third column of that Schedule.

#### **25 Short title and commencement**

- (1) This Act is called the Regulation of Cross-border Road Transport Act, 2018 and comes into operation on a date determined by the President by proclamation in the Government Gazette.
- (2) Different dates may be so determined in respect of different provisions of this Act.

# SCHEDULE

## LAWS REPEALED OR AMENDED

(Section 22)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3 amendment</b>
<b>No. and year of law</b>	<b>Title</b>	<b>Extent of repeal or amendment</b>

# MEMORANDUM ON THE OBJECTS OF THE REGULATION OF CROSS-BORDER ROAD TRANSPORT BILL, 2018

## 1. BACKGROUND AND PURPOSE

The EAC-COMESA-SADC Tripartite region is working towards harmonisation of transport legislation and formation of a unitary system of regulation of cross border road transportation, which does not derogate from the uniqueness of any country in the region. One of the objects of this is to promote economic development of the individual countries. The manner of regulation should be done in a manner that does not impede growth and development. The Tripartite Member States have concluded the Tripartite Multilateral Cross-Border Road Transport Agreement to provide for such harmonisation and working towards such a unitary system of regulation. The Agreement also provides for the regulation of cross-border road transport between the Member States, and where such transport is undertaken in the territory of one of the Member States where the vehicle is registered in another state (called “cabotage”).

The Model Bill has been drafted for the Regulation of cross-border road transport and cabotage in the Tripartite Region. The Bill can be adopted by the Member States, with or without modifications, and be passed as legislation applicable in the relevant state. The Model Bill provides broadly for the following:

- a) moving from quantity regulation to quality regulation of operations of cross-border road transport in Member States that have not already done so;
- b) regulating the movement of operators undertaking cross-border road transport between and in transit through the territories of the Member States and to regulate access to transportation in the territories of the Member States;
- c) establishing a harmonised and integrated operator registration system;
- d) providing for the issuing of cross-border operations identification discs and electronic monitoring devices to operators of cross-border road transport and cabotage;
- e) providing for the grading of such operators;
- f) facilitating procedures for law enforcement in relation to operators and drivers in respect of cross-border road transport and cabotage given the proposed violations administration system, and
- g) facilitate the monitoring system to record offences and violations by operators and drivers and the penalty points system established by the Road Traffic and Transport Transgressions Act.

## **2. CLAUSE-BY-CLAUSE ANALYSIS**

### **2.1 Clause 1: Definitions**

Clause 1 provides definitions for the Act.

### **2.2 Clause 2: Purpose of this Act**

Clause 2 explains the purpose of the Bill. The main purpose is to give effect to the Tripartite Multilateral Cross-Border Road Transport Agreement as regards the regulation of cross-border road transport operations.

### **2.3 Clause 4: Application for registration as an operator**

In order to regulate cross-border road transport as aspired to in the Agreement, it is necessary for operators to be registered by the relevant authority in the Member State concerned. This is the government department or entity responsible for managing road transport in the Member State, and which is responsible for managing the relevant domestic transport information system. It is called “the Competent Authority” in the Bill. The Minister will make regulations or statutory instruments on the procedures for registration. (In this Memorandum delegated or subsidiary legislation to be made by the Minister is referred to as “regulations”.) Once an operator is registered, he, she or it becomes authorised to undertake cross-border road passenger or freight transport in any of the Member States. The competent authority must record details of registration on the National Transport Information System and ensure that it is accessible by the TRIPS system so that all Member States have access to the information.

### **2.4 Clause 5: Responsible competent persons**

Responsible competent persons must apply to the competent authority for registration independently from an operator. An applicant who satisfies the prescribed requirements will be issued a certificate as registered responsible competent person.

Each registered operator must notify the competent authority of the duly registered responsible competent person whom the operator has nominated as his, her or its registered representative or proxy for purposes of the Act, including monitoring of and contact with the operator.

### **2.5 Clause 6: Operator discs and electronic monitoring of vehicles**

As provided for in the Agreement, once an operator is registered to undertake cross-border road transport, the Competent Authority must issue an operator disc for each vehicle operated by the operator for those purposes. Operator discs must be bar-coded and display the prescribed information to enable law enforcement officers to identify the vehicle as being operated by a

registered operator.

The clause will also empower the Minister to make regulations requiring operators undertaking cross-border road transport to fit electronic devices to their vehicles in order to monitor their position and routes so as to enable the competent authority and other relevant authorities to undertake effective transport planning, determine routes for dangerous goods transport, regulate traffic and prevent operators from using roads or routes that are not designed for the loads in question.

#### **2.6 Clause 7: Registration of vehicles**

This clause requires registered operators to supply the Competent Authority with details of all vehicles operated by that operator for cross-border road transport and cabotage for purposes of registration.

#### **2.7 Clause 8: Registration of drivers**

This clause requires registered operators to supply the Competent Authority with details of all drivers employed or used by that operator for cross-border road transport and cabotage for registration. Such drivers are required to hold a professional driving permit or in their state of registration.

#### **2.8 Clause 9: Operating standards**

Clause 9 requires registered operators to comply with all relevant laws throughout the Tripartite Region as well as applicable standards and requirements published in terms of the Agreement or as adopted into the domestic legislation of the Member State.

#### **2.9 Clause 10: Exemptions**

Clause 10 provides that a registered operator may apply to the Competent Authority for exemption from having to comply with any of the standards or requirements contemplated in clause 8.

#### **2.10 Clause 11: Protection of information**

Clause 11 provides that information kept on registered operators must be kept confidential and only used for purposes of the Act and other related legislation. The information must be deleted once it is no longer required.

#### **2.11 Clause 12: Application for grading**

The Bill provides for the grading of operators into categories for the purposes of cross-border road transport. The purpose is to facilitate monitoring and regulation of operators and to enable operators who acquire a higher grading status to enjoy certain exemptions or benefits.

### **2.12 Clause 13: Grading of operators**

Clause 13 provides for procedures for operators to apply for grading. The Minister will prescribe categories for grading. These should be standardised throughout the Region so that benefits etc. can be standard for all operators with an equivalent status.

### **2.13 Clause 14: Cancellation and amendment of grading status**

Clause 14 provides that an operator's grading status may be cancelled or amended if the operator no longer qualifies in terms of the requirements for the particular category of grading or if the operator has acquired an unacceptable number of demerit points or no longer complies with the requirements for the type of transport being undertaken.

### **2.14 Clause 15: Information systems**

Clause 15 places an obligation on the Minister and the competent authority to establish and maintain amongst others an Operator Registration System and a Transgression System, which together with the Vehicle System and the Driver System are inter-linked for purposes of verification or validation of information and collectively referred to as the National Transport Information System that is capable of electronic recording of information required to implement the Act and the Agreement. The system must be interoperable with and accessible by the regionally-based TRIPS system.

### **2.15 Clause 16: Operators to have insurance cover**

This clause requires registered operators who undertake cross-border road transport to have comprehensive motor vehicle insurance cover, as well as third party liability insurance cover as prescribed with a primary insurance company in terms of an insurance scheme to be approved by the Commission. The specific type of insurance cover, i.e. the relevant insurable interests or risks, will be prescribed in regulations. Operators must satisfy the Competent Authority that they have the required insurance, in the form of a document, disc or other distinguishing mark to be carried in or displayed on the operator's vehicles as proof of insurance. This may be a yellow card as used in some Member States and/or some other form of identification that will be specified in the regulations.

### **2.16 Clause 17: Appeals**

Clause 17 allows operators who are aggrieved by decisions of the competent authority with regard to registration or grading to appeal to the Administrative Appeals Committee. The State in question may already have such a committee or tribunal, which can be adapted if necessary to hear appeal in terms of the Act. This may require amendment of the legislation establishing that tribunal.

### **2.17 Clause 18: Appeals to Committee**

Clause 18 provides for the establishment of an Administrative Appeals Committee. This clause will only be required if the state does not already have such a tribunal.

### **2.18 Clause 19: Decisions of Committee and procedures for hearing appeals**

This clause provides for the powers and duties of the Committee relating to appeals, as well as procedures for hearing and dealing with them. The clause will not be required if the state already has an appeals tribunal which can be used to hear appeals in terms of the Act.

### **2.19 Clause 20: Offences and penalties**

Clause 20 provides for offences and penalties in respect of offences created by the Act.

### **2.20 Clause 21: Regulations**

Clause 21 empowers the Minister to make regulations on any matter on which regulations may or must be made in terms of the Act. Before making such regulations the Minister must consult the Commission and publish a draft of the regulations in the Government Gazette for comment.

### **2.21 Clause 22: Repeal and amendment of laws**

Clause 22 provides for the repeal and amendment of laws. For example, if the state already has an act creating an appeals tribunal, that act may have to be amended to provide for it to hear appeals in terms of this Act.

### **2.22 Clause 23: Short title and commencement**

Clause 23 provides for the short title and date of commencement of the Act.