

COMESA-EAC- SADC TRIPARTITE

**Road Traffic and Transport
Transgressions**

MODEL LAW

Version 3 Draft 1

2018-10-07

ROAD TRAFFIC AND TRANSPORT TRANSGRESSIONS BILL

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

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

[B Enter bill number here. – 2018]

ACT

(Signed by the President)

To provide for the classification of certain road traffic and transport transgressions; to provide for the decriminalisation of certain road traffic and transport offences; to provide for the administrative adjudication of those offences; to provide for a comprehensive road traffic and transport transgression retribution system; to repeal the certain sections of the [*refer to the country legislation that describes road traffic offences*] (Act No ? of year?); and to provide for matters connected therewith.

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CHAPTER I: PRELIMINARY

1 Definitions

In this Act, unless the context otherwise indicates-

“acceptable means of electronic payment” in relation to the payment of a security bond or violation penalty in terms of this Act means-:

- (a) a credit Card issued by an international credit card company such as Visa and Master Card;
- (b) mobile Money service offered by a licensed cellular telephone service provider such as Mpesa;
- (c) wire transfer to the designated bank account for payment of overload fees, or
- (d) cash deposit at the bank directly into the designated bank account for payment of overload fees;

“COMESA” means the Community for Eastern and Southern African States established in terms of the Treaty Establishing the Common Market for Eastern and Southern Africa, December 1994

“EAC” means the East African Community established in terms of the Treaty for the Establishment of the East African Community, 7 July 2000;

“government institution” means any government ministry, department or public entity reporting to a ministry or a department;

“offence” means a road traffic or transport transgression that classified as a criminal offence, in terms of this Act, and which is adjudicated in terms of the criminal law;

“road traffic transgression ” means a transgression of the *[Insert reference to the country-specific Road Traffic Act]*;

“road transport transgression ” means a transgression of the *[Insert reference to the country-specific Cross Border Road Transport Act and the National Road Transport Act (if applicable)]*;

“SADC” means the Southern African Development Community established in terms of the Treaty of the Southern African Development Community, 1992;

transgression” means the collective of a road traffic or transport offence and a road traffic or

transport violation;

“**Violation**” means a road traffic or transport transgression that has been classified as an administrative transgression in terms of this Act and which is administratively adjudicated as prescribed in this Act;

“**Minister**” means *[insert reference to the Minister responsible for the administration of the Act]*;

“**prescribed**” means prescribed by regulation;

“**this Act**” includes the Regulations and any other publication made in terms of this Act;

2 Administering of Act

(1) The Minister must nominate the person or body of persons or authority that must administer this Act.

(2) Where a person has committed a transgression that constitutes both an offence and a violation in terms of this Act, that transgression must be treated as an offence.

3 Application of Act

This Act applies to any transgression in terms of the –

- (a) Road Traffic Act *[Insert reference to model law as adopted in-country]*;
- (b) Cross-Border Road Transport Act *[Insert reference to model law as adopted in-country]*;
- (c) Vehicle Load Management Act *[Insert reference to model law as adopted in-country]*;
- (d) Transportation of Dangerous Goods by Road Act *[Insert reference to model law as adopted in-country]*.

CHAPTER II: CLASSIFICATION OF TRANSGRESSIONS

PART I: CRIMINAL OFFENCES

4 Offences

Any road traffic or transport transgression that in terms of Schedule 1 to this Act is classified as an offence, must be adjudicated in terms of the *[Insert reference to the country criminal procedure laws]*.

5 Certain offences to be heard in the High Court

The following offences must be heard in the High Court:

- (a) causing death or injury through inconsiderate, negligent or reckless driving;
- (b) causing death or serious injury through driving with a blood, or breath level of alcohol or drugs exceeding the level determined in sections Andof the Road Traffic Act*[insert reference to the Model Road Traffic Law as adopted nationally]*

6 Proof of driver or owner at time of offence

(1) In any prosecution for an offence to which this Part applies, a certificate in the form approved by the Minister, purporting to be signed by a *[traffic officer/police officer]* and certifying that a person specified in the certificate stated to that *[traffic officer/police officer]*

—

- (a) that the motor vehicle concerned in committing the offence was being driven or used by, or belonged to, that person; or
- (b) that the motor vehicle concerned in committing the offence was used by, or belonged to, an unincorporated entity¹ and that he or she was, at the time of the statement, a partner in that firm, or
- (c) that the motor vehicle concerned in committing the offence was used by, or belonged to and incorporated entity² and that he was, at the

¹ A partnership

² A company or close corporation or co-operation, depending on the in-country laws

time of the statement, a director, officer or employee of that incorporated entity,

is admissible as evidence to determine by whom the vehicle was being driven or used, or to whom it belonged, as the case may be, on that occasion.

(2) In a prosecution of an offence under this Part, a statement in writing is produced to the court purporting to be signed by the accused that the accused was the driver of that vehicle on that occasion, the court may accept that statement as evidence that the accused was the driver of that vehicle on that occasion.

7 Admissibility of records as evidence.

- (1) A statement contained in a document purporting to be—
- (a) a record kept in terms of the *[include reference to road traffic and road transport legislation or the national transport information system]*, or
 - (b) a copy of a document forming part of those records, or
 - (c) a note of any information contained in those records;
 - (d) which had been authenticated by a person authorised to do so by the Minister.

is admissible in the prosecution of an offence in terms of this Part.

- (2) A statement contemplated in subsection (1) is admissible in any proceedings as evidence of any fact stated in it to the same extent as oral evidence of that fact is admissible in those proceedings

8 Presumption in relation to breath alcohol

(1) If, in any prosecution for a contravention of a provision of an offence concerning the driving of a motor vehicle while the concentration of breath alcohol exceeds the limit prescribed by the Minister in terms of the*[insert reference to the Model Road Traffic Law as adopted nationally]*, it is presumed in the absence of evidence to the contrary that such concentration did exceed the limit so prescribed.

(2) For the purposes of subsection (1) the concentration of alcohol in any breath specimen must have been ascertained by using the prescribed equipment.

- (3) Any person detained for an alleged offence contemplated in this section may

not during his or her detention -

- (a) consume any substance that contains alcohol of any nature, except on the instruction of or when administered by a medical practitioner;
 - (b) smoke until the specimen has been taken.
- (4) A person may not refuse that a specimen of breath, be taken of him or her.

9 Presumption in relation to blood alcohol

(1) If, in any prosecution for an alleged offence of driving or occupying the driver's seat of a motor vehicle while the engine is running, it is proved that the concentration of alcohol in any specimen of blood taken from any part of the body of the person concerned exceeds the limit prescribed by the Minister in terms of the ...*[insert reference to the Model Road Traffic Law as adopted nationally]*, it is presumed in the absence of evidence to the contrary that such concentration did exceed the limit so prescribed.

- (2) Any person detained for an alleged offence contemplated in this section any may not during his or her detention-
- (a) consume any substance that contains alcohol of any nature, except on the instruction of or when administered by a medical practitioner;
 - (b) smoke until the specimen has been taken.

(3) A person may not refuse that a specimen of blood, be taken of him or her.

(4) Where in any prosecution in terms of this Act proof is submitted of the analysis of a specimen of the blood of any person, it is presumed, in the absence of evidence to the contrary, that any syringe used for obtaining such specimen and the receptacle in which such specimen was placed for despatch to an analyst, were free from any substance or contamination which could have affected the result of such analysis

10 Presumption in relation to drug driving

(1) If, in any prosecution for an alleged offence of driving or occupying the driver's seat of a motor vehicle while the engine is running, it is proved that the concentration of in any specimen of blood taken from any part of the body of the person concerned exceeds the limits in relation to drugs prescribed by the Minister in terms of section of the Road Traffic Act ...*[insert reference to the Model Road Traffic Law as adopted nationally]*, it is presumed in the absence of evidence to the contrary that such concentration did exceed the limit

so prescribed.

(2) Where in any prosecution in terms of this Act proof is submitted of the analysis of a specimen of the blood of any person, it is presumed, in the absence of evidence to the contrary, that any syringe used for obtaining such specimen and the receptacle in which such specimen was placed for despatch to an analyst, were free from any substance or contamination which could have affected the result of such analysis.

11 Obligatory suspension and cancellation of driving licence

(1) A Court must in the case of offences identified as such in Schedule 1 to this Act, suspend the driving licence for –

- (a) a period of one year on the commission of a first offence; or
- (b) a period of two years on the commission of a second offence;

(2) A driving licence that has been suspended in terms of subsection (1) may be re-issued after the period of suspension and the holder of that driving licence does not have to be re-tested for that driving licence.

(3) A Court must on the commission of a third or subsequent offence cancel the licence of the offender for a period of three years on the commission of a subsequent offence and that offender must apply for a new driving licence after that period as if he or she is applying for the first time for a driving licence in accordance with the road Traffic Act.....*[insert reference to the Model Road Traffic Law as adopted nationally]*.

12 Subsequence of cancellation of driving licence

Notwithstanding the provisions of section 11, a Court may in its discretion, cancel an offender's driving licence in which case that offender's driving licence may not be re-issued unless sanctioned by the Court, and unless the offender has completed the theoretical and practical tests prescribed in terms of the Road Traffic Act *[insert reference to the Road Traffic Model Law as adopted in-country]*.

13 Alternative sentences

(1) A court may impose a sentence on an offender alternative to imprisonment in the case where the court is convinced that -

- (a) rehabilitation is appropriate for a drunk or drug driving offender; or
- (b) community service is an appropriate sentence for an offence in terms

in this Chapter; or

(c) driver re-training is an appropriate sentence for an offence in terms of this Chapter,

(2) The Court may impose a combination of any of the above sentences on an offender who committed an offence in terms of this Chapter.

(3) The Court may require that a drunk or drug driving offender must in addition to a prison sentence undergo a rehabilitation course.

14 Fine or imprisonment and reparation

(1) An offence indicated in Schedule 1 is subject to imprisonment for a period not exceeding 15 years or a fine not exceeding the amount equal to 10,000.00 US\$ [currency to be converted as per country exchange rate at the time of the implementation of the Model Law] for every year that an offender is or would have been imprisoned.

(2) Where a person is found guilty of causing death or serious injury by driving inconsiderately, negligently or recklessly or through driving under the influence of alcohol or drugs as contemplated in this Act and the Road Traffic Act[insert reference to the Model Road Traffic Law as adopted nationally], a Court may require the offender to pay reparation to the immediate family of the deceased or to the person injured.

15 Apportionment of fines for offences

A fine imposed or bail forfeited in relation to an offence contemplated in this Chapter must be paid into the Central Revenue Fund. *[This section must be adapted in-country to suit each country's financial and constitutional legislative structure].*

PART II: VIOLATIONS

16 Violations

(1) Any road traffic or transport transgression that in terms of Schedule 2 to this Act is classified as a violation, must be adjudicated in terms of the [Insert reference to the section/article in the Constitution that ensures due process].

(2) Violations are classified as major violations, which carry a penalty and demerit points, and minor violations, which carry only a penalty.

17 Adjudication

(1) The [*insert reference to the person, body of persons or authority responsible for adjudicating road traffic and transport violations- should the country have or intend to establish a dedicated Agency, a PART for that purpose needs to be inserted before section 16. (Establishing an Agency is not recommended unless the traffic volume necessitates it and if the country can afford to operationalise such and agency)*] may for the adjudication of violations, appoint an adjudicator, who must be 1 appropriately qualified and who must have substantial knowledge of the administrative law;

(2) The [*insert reference to the person, body of persons or authority administering the Act*] may appoint an assessor or assessors to assist the adjudicator or adjudicators and who must be qualified in the field of road traffic or road transport, depending on the nature of the violation;

(3) An adjudicator may evaluate any submissions made by a violator and for this purpose may undertake any investigation that he or she considers necessary and rely on his or her own knowledge and experience.

(4) An adjudicator may perform any function that is necessary to exercise his or her functions in relation to the adjudication of a violation in terms of this Act.

18 Penalty and demerit points system

(1) The Minister must implement an electronic demerit points system in support of Schedule 2 to this Act, providing for –

- (a) demerit points and penalty fees to be attached to a violation;
- (b) the saturation level of demerit points when a driving licence, professional driving permit, operator registration, operator card, or vehicle licence must be suspended;
- (c) the saturation level of penalty points at which a driving licence, operator registration or vehicle licence is cancelled.
- (d) The rehabilitation rate at which point the demerit points are not further reduced provided no further violations are committed;
- (e) the discount that may be given on early payment of penalties; and
- (f) any other matter for the efficient implementation of a demerit points

system.

(2) The system referred to in subsection (1) must be able to link in real-time to the National Transport Information System.

19 Minor violations not to be accorded demerit points

Minor Violations as listed in Schedule 3 to this act may not be accorded demerit points, but a penalty may be imposed in relation to such violations.

20 Payment of penalty

(1) A person who has been issued with a violation notice pursuant to having committed a major violation, must subject to section 19, pay the penalty by way of acceptable means of electronic payment into the account of [insert reference to the Authority where payment will be received] or make a submission as contemplated in section 22 within the prescribed period, failing which, that person is accorded the appropriate demerit points.

(2) A person who has been issued with a violation notice for a minor violation must pay the penalty imposed by the notice within the prescribed period and act in accordance with the instructions (if any) contained in that notice.

(3) Penalties are indicated in United States Dollars and must be paid by a violator whose vehicle is registered in or who holds a driving licence issued in *[insert country]*, in *[insert local currency]*.

(4) The [insert reference to the authority administering the Act] must update the demerit points and penalties system accordingly.

(5) An unpaid penalty is collected in accordance with provisions of section 28.

21 Security bond

An authorised officer may on the prescribed conditions require the person who committed the violation to pay a security bond equal to the penalty accorded that violation before the vehicle is allowed to continue its journey, pending the final adjudication of that violation.

22 Submission

(1) A person who has been issued with a violation notice, whether he or she paid

a security bond or not, a may within the prescribed period make a submission to the *[insert reference to the person or body of persons or authority responsible for adjudicating road traffic and transport violations]* explaining why he or she should not pay the penalty or be accorded the demerit points accorded the violation concerned.

(2) The *[[insert reference to the person or body of persons or authority responsible for adjudicating road traffic and transport violations]* must evaluate the submission referred to in subsection (1) within the prescribed period and if the submission is successful, refund the person concerned the security bond paid by him or her.

(3) If the person failed to make a submission as contemplated in subsection (1) within the prescribed period or the submission by that person concerned is not successful, the security bond is retained by the *[insert reference to the person or body of persons or authority responsible for adjudicating road traffic and transport violations or the relevant Fund into which the penalties will be paid]* and the person is accorded the appropriate demerit points.

(4) The *[insert reference to the person or body of persons or authority responsible for adjudicating road traffic and transport violations]* must after a decision has been taken in relation to a submission, update the Transgressions System accordingly.

23 Serving of notices and communication

(1) Notwithstanding any law to the contrary, any notice in terms of this Part may be served on a transgressor or any message may be communicated to that violator by way of electronic communication.

(2) Where a person does not have access to electronic means, the *[insert reference to the relevant in-country authority]* may serve a notification on that person by hand or by post.

(3) Notwithstanding subsection (2), an operator, driver or owner has the responsibility to keep abreast of his or her Transgressions Record.

CHAPTER III: MISCELLAENOUS

24 Regulations

- (1) The Minister may make regulations in relation to-
 - (a) any process in support of this Act;
 - (b) the manner of adjudication of a violation in terms of this Act;
 - (c) the security bond to be paid in relation to a violation in terms of this Act;
 - (d) a demerit points system in relation to a violation in terms of this Act;
 - (e) the manner of appeal against an adjudication decision in terms of this Act; and
 - (f) any other matter for the efficient and effective execution of this Act.

(2) Before the Minister makes any regulation under this section, he or she may publish a draft of the proposed regulation in the *[Insert reference to country official gazette]* together with a notice calling on interested persons to comment, in writing, within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice.

(3) If the Minister incorporates any comment into the regulations, he or she need not publish those incorporated comments as contemplated in subsection (2) before making the regulations.

(4) The power conferred to make regulations includes the power to incorporate into any regulation so made any standard publication contemplated in subsection (7) or any part thereof, without stating the text thereof, by mere reference to the number, title and year of issue of that standard publication or any other particulars by which it is sufficiently identified.

(5) Any provision of a standard publication incorporated into regulations under subsection (4) is, for the purposes of this Act, in so far as it is not inconsistent with the regulations made in terms of this Act, is deemed to be a regulation.

(6) Regulations incorporating any standard publication under subsection (4) must state the place at and times during which a copy of the standard publication is available for inspection.

(7) For the purposes of subsection (4) "standard publication" means any code of practice, specification, standard or standard method published or issued by the *[insert reference to standards body]* a standard adopted by the COMESA-EAC-SADC Tripartite or any bureau,

body, organization or authority established with the object of promoting standardization, and which [Country] is authorised to apply by virtue of any agreement between the [insert reference to standards body] and that bureau, body, organization or authority, or between the government of [country] and that bureau, body, organization or authority or between the Minister and that bureau, body, organization or authority.

25 Power of Minister to enter into agreements for performance of functions

(1) The Minister may enter into an agreement with any person, including any government institution, whereby arrangements are made for the exercise or performance by that person or institution of any power, duty or function conferred or imposed on any functionary by or under this Act, or for the rendering of any service or the provision of any facility as may be considered necessary or expedient for the purpose of the exercise or performance of any such power, duty or function.

(2) The entrustment of any power, duty or function to any person under an agreement under subsection (1) is subject to such conditions as the Minister may determine.

(3) Conditions referred to in subsection (2) may include conditions in relation to the apportionment between the State and the contracting party of any fees payable in terms of this Act in respect of the exercise or performance of any power, duty or function entrusted to the contracting party.

26 Delegation of powers and duties

(1) The Minister may delegate or assign to any person, body of persons or government institution, any power or duty conferred or imposed on the Minister by this Act, except the power to make regulations under section 24.

(2) A delegation or assignment by the Minister under subsection (1)-

(a) may be made subject to such conditions as the Minister may determine; or

(b) may be withdrawn or varied by the Minister; and

(c) does not preclude the Minister from exercising or performing any power or duty so delegated or assigned by him or her.

(3) The Minister may enter into an agreement with any person, body of persons or government institution to perform any function in terms of this Act..

27 False or misleading information

A person who is required by or under this Act to give any specified information, or who gives an affidavit for any purpose under this Act, may not give in response to that requirement, or in that affidavit, information that the person knows to be false or misleading.

28 Debt collection

(1) A penalty not paid in the prescribed period, constitutes a liquidated debt to the *[Insert reference to the authority administering the Act or the Road Fund if applicable]* and may be collected in terms of the *[Insert reference to the law regulating civil debt collection procedure]*.

(2) The debt referred to in subsection (1) is subject to interest at the at the repurchase rate determined by the Reserve Bank *[insert reference to reserve bank or country national bank, plus section and Act]* plus 6%.

(3) rate current at the date on which the penalty becomes overdue.

(4) A debt referred to in subsection **Error! Reference source not found.** must be registered on the National Transport Information System as such.

- (a) A person or operator against whose name a debt is registered , may not -be issued with a learner's or driving licence in terms of the *[insert reference to the Road Traffic Model Law as adopted in-country]*
- (b) be issued with a professional driving permit in terms of the *[insert reference to the Road Traffic Model Law as adopted in-country]*
- (c) be registered as an operator in terms of the Cross-Border Road Transport Act *[insert reference to the Model law as adopted in-country]* or be issued with an operator disc in terms of that Act;
- (d) be registered as a responsible competent person as contemplated in section X of the Cross-Border Road Transport Act *[insert reference to the Model law as adopted in-country]*;
- (e) An examiner of motor vehicles may not issue a roadworthy certificate in relation to a motor vehicle in connection with which a penalty imposed in terms of this Act has become a liquidated debt to the *[insert reference to the relevant authority]*.

- (f) The *[insert reference to relevant registering authority]* may not register a motor vehicle in the name of a person against whom a debt has been registered on the National Transport Information System.
- (g) The *[insert reference to the relevant licensing authority]* may not licence a motor vehicle which is registered in the name of the person against whose name a debt has been registered on the national Transport Information System.

29 Amendments and Repeal

The laws specified in the Schedule to this Act are amended or repealed to the extent set out in the third column thereof on the dates determined by the Minister by notice in the Gazette and different dates may be so determined in terms of different sections of the laws specified in the Schedule.

30 Transitional provision

(1) The Minister may, by notice in the Gazette, relax any requirement in terms of this Act for a transitional period of two years, to facilitate the implementation of the Act.

(2) Any transgression committed under the provision of a law repealed on terms of section 16, must be adjudicated in terms of the repealed law.

31 Saving

(1) Subject to the provisions of this Act, anything done under a provision of a law amended by section 17 and which could have been done under a corresponding provision of this Act, is deemed to have been done under such corresponding provision of this Act and remains valid after the commencement of this Act.

(2) For the purpose of subsection (1) any regulation made, in relations to any matter contemplated in this Act, under any law repealed by section 17 is deemed to be a regulation made under section 13 and remains in force until repealed in terms of this Act or any other law.

32 Government institutions bound

This Act binds any government institution and any person in the service of that government institution.

33 Short title and commencement

This Act is called the "Road Traffic and Transport Violations Act, 2018" and commences on the date determined by the Minister by notice in the *[Insert reference to country-official gazette]* and different dates may be so determined in relation to different sections or subsections of the Act.

SCHEDULE

Column 1	Column 2	Column 3 amendment
No. and year of law	Title	Extent of repeal or amendment