

**COMESA-EAC- SADC TRIPARTITE
ROAD TRAFFIC AND TRANSPORT
TRANSGRESSIONS**

REGULATIONS

Version 2 Draft 1

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REGULATIONS IN TERMS OF Road Traffic and Transport Transgressions Model Law

The Click here to enter Minister or entity responsible has under Click here to enter section, Act, year, version, made the regulations set out in the Schedule.

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CHAPTER I: DEFINITIONS

1 Definitions

In these Regulations, every word takes the meaning given to it in the Act or where the context so indicates, in 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: VIOLATIONS

PART I: NOTICES

2 Content of violation notice

A violation notice issued in terms of these Regulations, must contain the following information:

- (a) if identified, the name and address of the driver concerned, including his or her telephone number and e-mail address;
- (b) the identification type and number of the driver concerned;
- (c) the nationality of the driver concerned;
- (d) the driving licence number of the driver concerned;
- (e) the country of issue of the driving licence held by the driver concerned;
- (f) if applicable, the number and code of a professional driving permit held by the driver concerned;
- (g) if an operator is registered for the vehicle concerned, the name and address of that operator;
- (h) if applicable, the operator disc number of the vehicle concerned;
- (i) where an operator is registered for the motor vehicle used in the commission of a violation, the country of issue of the operator card;
- (j) the name and address of the owner of the motor vehicle used in the commission of the transgression;
- (k) the particulars of the motor vehicle concerned, being the-
 - (i) motor vehicle registration number or licence number displayed on the number plate of the vehicle, or temporary permit number;
 - (ii) motor vehicle licence disc number [this requirement can be omitted for countries which do not licence motor vehicles];
 - (iii) gross vehicle mass, if applicable;
 - (iv) make of vehicle;
 - (v) colour of vehicle;

- (l) the date and time of commission of the violation;
- (m) the location where the violation was committed;
- (n) a description of the violation committed including the Act, section or regulation in terms of which the action or omission constituting the violation is prohibited;
- (o) the penalty amount imposed in terms of Schedule 1;
- (p) for a major violation contemplated in Schedule 1, the demerit points to be attached to the record of the owner or driver concerned;
- (q) a notification to the driver, or owner concerned that-
 - (i) the penalty must be paid within 30 calendar days of the date on which the violation was committed, together with the acceptable means of electronic payment by which the penalty may be paid; and
 - (ii) he or she may make a submission to the *[insert reference to the relevant in-country authority]* within 30 calendar days of the date on which the violation was committed providing factual grounds on which he or she believes that he or she should not have been imposed a penalty and in the case of a major violation, should not accrue demerit points as indicated in the notice, failing which the notice is confirmed;
- (r) the physical or electronic address to which and the means by which a submission in terms of regulation 6 must be submitted.

3 Issuing violation notice

(1) A *[insert the relevant in-country authorised officer/s or authority/s]* may issue a violation notice manually or electronically, including e-mail, a text message or similar electronic means to the driver, owner or operator of a motor vehicle-

- (a) after having observed that driver committing a violation on a public road, and having stopped the driver concerned;
- (b) after having observed the violation being committed by means of electronic or mechanical surveillance; or

- (c) after having stopped the driver with the objective to perform an inspection of the vehicle and an inspection of the driver and/or operator documentation and observed a violation.

(2) Where a *[insert the relevant in-country authorised officer/s]* serves a violation notice on a driver at the roadside, the *[insert the relevant in-country authorised officer/s]* may request that the driver concerned produces his or her driving licence, and where applicable, his or her professional driving permit.

(3) If a driver on whom a violation notice is served cannot produce his or her driving licence or professional driving permit when requested by the *[insert the relevant in-country authorised officer/s]*, he or she must pay a security bond as contemplated in regulation 10, and produce his or her driving licence at the place determined by the *[insert the relevant in-country authorised officer/s]* in a notice served on the driver concerned on the form approved by the Minister.

(4) The driver referred to in subregulation (3), must produce his or her driving licence in terms of that sub-regulation within 14 days after the date of issue of the violation notice.

(5) Where the driver of a motor vehicle used in committing the violation could not be identified, the violation notice must be sent to the operator of that motor vehicle, and if no operator has been registered in respect of the vehicle, to the owner of that motor vehicle.

(6) A notice issued in terms of this regulation may be affixed in a prominent place to the vehicle used in committing a violation if the driver of the vehicle is not in the vehicle at the time of the violation being committed and the vehicle is stationary.

(7) The operator or owner of the motor vehicle referred to in subregulation (5), must identify the driver of his or her motor vehicle at the time of the violation having been committed at the address provided in the violation notice, if he or she did not drive the motor vehicle at that time.

(8) If the owner of the motor vehicle used in the commission of a violation has not identified an alternative driver within seven days after the commission of the violation, that owner is deemed to have committed the violation.

4 Identification of driver

(1) The operator or owner of a motor vehicle must at all times be in a position to determine and identify the driver or person in control of his or her vehicle.

(2) Where an operator or owner did not drive the motor vehicle with which the violation was committed and he or she identifies the driver who was in control of his or her vehicle at the time of the commission of the violation as referred to in regulation 3(7), he or she must submit to the *[insert reference to the relevant in-country authority]* the name, surname, type of identity document and its number, physical and electronic address and mobile telephone number of the driver.

(3) If the operator or owner is unable to submit the particulars of the driver required in terms of subregulation (2), but is in a position to submit factual particulars to the effect that the operator or owner did not commit the violation by way of a submission in terms of regulation 6, the original violation notice must be withdrawn and another notice must be issued to the operator or owner for failing to maintain proper records in respect of the driver or person in control of his or her motor vehicle.

5 Notice deemed to be served

(1) Where a notice has been served at the roadside, the signature or usual mark of the person on whom it has been served must be captured on the Transgressions System and that signature or usual mark is proof that the notice has been served.

(2) Where a person refuses to sign or affix his or her usual mark for the violation notice, a note to that effect signed by the *[insert reference to the relevant authorised officer]* suffices as proof that the notice was duly served.

(3) Where a notice is served electronically, an extract from the Transgressions System that it was so sent, suffices as proof that the notice was duly served.

PART II: SUBMISSIONS AND ADJUDICATION

6 Submission

(1) Any person who has been issued with a violation notice, may within 30 calendar days make a submission to the *[Insert relevant in-country authority]* as to why

- (a) he or she should not have to pay the penalty imposed on him or her by that notice; and
- (b) he or she in the case of a major violation should not accrue the demerit points indicated on that notice.

(2) A submission must be made on a prescribed form, which may be submitted online following an electronic registration process by the transgressor, allowing for the upload of scanned copies of the signed form and supporting documents;

(3) Any documents offered in support of the submission referred to in subregulation (1), must be uploaded onto the Transgressions System.

(4) The Transgression System acknowledges receipt of a submission by providing a submission reference number to the transgressor, failing which the transgressor must repeat the upload of the submission to obtain a submission reference number.

7 Adjudication of submission

(1) An adjudicator appointed in terms of section 15 of the Act, must evaluate the submission made in terms of regulation 6 in accordance with the relevant law in terms of which the violation has been committed.

(2) In evaluating the submission made in terms of regulation 6, the adjudicator must act reasonably and without bias.

(3) If the adjudicator is in any way connected to the person making the submission that adjudicator must recuse him or herself from the adjudication of the submission.

8 Decision of adjudicator

(1) An adjudicator must make his or her decision in relation to a submission made in terms of this Part within a period of thirty calendar days from the date of the submission and communicate that decision to the person who made the submission.

(2) An adjudicator may not make a decision to reduce the penalty or the demerit points.

(3) The decision of the adjudicator may only on factual grounds grant the submission in full or deny the submission.

(4) Where a submission is granted, the violation notice concerned must be cancelled and no penalty is due or demerit points accrue to the person against who that violation notice was issued.

(5) Where the submission is denied, the penalty imposed becomes due on the thirty first day after it has been issued or within 7 days of the date of communication of the decision, whichever is the later, and the demerit points in respect of major violations accrue to

the person to whom the notice has been issued.

(6) Where the adjudicator denies the submission made in terms of regulation 6, he or she must provide a reason to the person who submitted such a submission.

(7) The adjudicator must register his or her decision and the reason therefor on the Transgressions System.

9 Notification of outcome of submission

After the adjudicator has registered his or her decision on the Transgressions System, the *[insert reference to the relevant in-country authority]* must notify the person who made the submission of the outcome of the adjudication of his or her submission by serving the notification by the electronic messaging method selected by the person during the online registration and upload of the submission, from the e-mail, text messaging or similar electronic messaging options available on the Transgression System.

PART III: PAYMENT

10 Circumstances under which security bond may be required

(1) A *[insert reference to in-country authorised officer]* may require from a person who has been issued with a violation notice, to pay a security bond equal in value to the amount of the penalty by the acceptable means of electronic payment if the person concerned-

- (a) committed a major violation;
- (b) does not have a fixed address;
- (c) cannot produce his or her driving licence or if applicable, professional driving permit to the issuing officer;
- (d) committed the violation driving a motor vehicle registered in a foreign country or of which the operator is registered in a foreign country; or
- (e) carries a driving licence or professional driving permit issued in a foreign country.

(2) Where a security bond has been required to be paid in terms of this regulation, and a submission made in terms of regulation 6 was successful, the person from whom the payment of the security bond has been required, must be refunded with that amount.

(3) Where a submission made in terms of regulation 6 was denied, the amount paid as a security bond is forfeited to the *[insert reference to the relevant in-country authority]* as payment of the penalty amount due by that person.

11 Payment

(1) A *[insert reference to in-country authorised officer]* may under no circumstances receive cash payment in relation to a penalty imposed in terms of this Act.

(2) Any penalty payment must be made by acceptable electronic means.

(3) Any penalty that is paid only partially or is dishonoured after initial payment has been made shall carry 10% penalty interest and the transgressor is liable for the outstanding amount of the penalty, 10% penalty interest and any additional administrative or banking costs regarding such a partial or dishonoured payment.

(4) A penalty that has been paid only partially or has been dishonoured becomes due on the date of that partial payment having been received or the payment having been dishonoured and the *[insert reference to the relevant in-country authority]* must register it together with the 10% penalty interest and any additional administrative or banking costs on the Transgressions System as a collectable liquidated debt contemplated in section 28 of the Act.

12 Consequences of early or late payment

(1) Where a person pays a penalty imposed on him or her in terms of these Regulations before thirty calendar days elapsed, he or she is entitled to a discount of 10%.

(2) Where a person neglects to pay a penalty imposed in terms of these Regulations within a period of thirty calendar days, the penalty is registered on the Transgressions System as a liquidated debt as contemplated in section 28 of the Act.

13 Transgressor not found

Where a person who committed a violation in terms of this Act cannot be found, the penalty amount in respect of a violation committed domestically or in any member or partner state of COMESA, EAC or SADC must be added to the amount due by that person for any transaction in terms of the legislation to which the Act applies, including an application for or renewal of-

- (a) a learner's or driving licence;
- (b) a professional driving permit;

- (c) registration as an operator;
- (d) issuing of an operator disc in respect of any vehicle;
- (e) registration as a responsible competent person;
- (f) registration of any motor vehicle;
- (g) licensing of any motor vehicle;
- (h) fitness inspection of any vehicle; or
- (i) allocation of a special registration or licence number to any vehicle.

PART IV: DEMERIT POINTS

14 Thresholds for demerit points

(1) The driving licence and professional driving permit where that person holds same, of a person who has accrued more than the maximum threshold of demerit points in Schedule 1, is suspended from the date of that person exceeding the maximum threshold of demerit points.

(2) The operator registration of an operator who has accrued more than the maximum threshold of demerit points in Schedule 1 is suspended from the date of exceeding the maximum threshold of demerit points.

(3) In the case of an operator or an owner of a fleet of motor vehicles, the operator disc or vehicle licence in relation to the vehicle concerned is suspended when the maximum threshold of demerit points in Schedule 1 registered in respect of that motor vehicle is exceeded.

(4) Where an operator or owner who owns a fleet of motor vehicles, that operator or owner of a fleet of motor vehicles may be limited in relation to the number of vehicles that it may operate or own in accordance with the following formula:

FORMULA TO BE INSERTED

15 Rehabilitation of person who has accrued demerit points

(1) Any demerit points accrued to an operator, owner or driver reduces by one point at the end of every three-month period.

(2) Notwithstanding subregulation (1), the operator, owner or driver of a motor vehicle accrues points for new violations independently from the points that are being reduced.

(3) On the date that the demerit points accrued to an operator, owner or driver have reduced to the maximum threshold of demerit points in Schedule 1, the suspension of the operator registration, operator disc, vehicle licence, driving licence or professional driving permit is lifted.

16 Cancellation of driving or vehicle licence, operator registration or operator disc or professional driving licence

(1) On the date of the third suspension of a driving licence, a professional driving permit, a vehicle licence, an operator disc or an operator registration, that driving licence, professional driving permit, vehicle licence, operator disc or an operator registration is cancelled.

(2) The period of cancellation is determined in accordance with the number of points by which the maximum threshold of demerit points was exceeded, as shown in Schedule 1.

(3) The [insert reference to the relevant in-country authority] may not during the period of suspension or cancellation of a driving licence, a professional driving permit, a vehicle licence, an operator disc or an operator card issue to the person concerned a new or a duplicate of that a driving licence, a professional driving permit, a vehicle licence, an operator disc or an operator card.

(4) Upon expiry of the period of cancellation of a driving licence and professional driving permit the holder must successfully complete the prescribed compulsory driver training course before being eligible to apply for a learner licence, driving licence and professional driving permit anew and be tested for same in terms of the Road Traffic Act.

17 Date of accrual of demerit points

Demerit points accrue to the transgressor on the date that-

- (a) the penalty in respect of a violation is paid;
- (b) an adjudicator has finalised and communicated his or her decision to deny a submission relating to a violation that has been made in terms of regulation 6;
- (c) if no submission has been made in terms of regulation 6, on the

thirty first day after the date of issue of the violation notice concerned;

- (d) an offender is found guilty by a competent court of an offence committed.

18 [Insert reference to the relevant in-country authority] to register demerit points

The *[insert reference to the relevant in-country authority]* must record the demerit points accrued to an operator, owner or driver in respect of transgressions committed domestically and in any member or partner state of COMESA, EAC or SADC on the Transgressions System.

19 Notification of demerit points

(1) The *[insert reference to the relevant in-country authority]* must by way of electronic messaging notify the person who has accrued demerit points of such accrual and the total number of demerit points that are recorded against the transgressor on that date.

(2) The *[insert reference to the relevant in-country authority]* may as a courtesy by way of electronic messaging notify a person whose demerit points has reached a level of 75% and 100% of the maximum demerit points threshold in Schedule 1.

CHAPTER III: MISCELLANEOUS

20 Access to transgressions record

(1) Any person has the right to access the Transgressions System to ascertain the status of his or her transgressions record.

(2) Subject to subregulation (3), an operator has the right to access the demerit points record of -

- (a) a driver employed by him or used by him to drive or operate a motor vehicle on his behalf;
- (b) a responsible competent person registered in terms of the Cross-Border Road Transport Act [*insert reference to model law as adopted in-country*] if that responsible competent person is employed by that operator or is applying to be employed by that operator.

(3) An operator who accessed a driver or responsible competent person's transgressions record-

- (a) may access only adequate and relevant information which is not excessive to the purpose of making an informed decision relating to the driver or responsible competent person concerned in relation not the safety of his or her operations;
- (b) must allow the person from whom the information is obtained to access that person's information;
- (c) must keep the information gained secure and confidential;
- (d) destroy the information obtained in respect of a driver or a responsible competent person when that person is not in the employ of the operator anymore or is not used to drive any of the operator's motor vehicles anymore.

21 Transitional provisions

The content of this regulations depends on the in-country method of implementation as well as the phases in which the system is being implemented.

22 Short title and commencement

(1) These Regulations are called the Road Traffic and Transport Regulations and commences on a date determined by the Minister by notice in the [insert reference to country government gazette].

(2) The Minister may determine different dates of commencement for different Parts, sections or subsections.

SCHEDULE 1

Monetary value of Penalty Unit, Discount and Fees in terms of sections 18(1) and 20(3) of the Act respectively

<i>(a)</i>	<i>Monetary value of penalty unit</i>	
	The monetary value contemplated in section 18(1) of the Act to be multiplied with the penalty unit as indicated in column 5 of schedule 3, the result of which is given in column 7 of the said schedule:	USD 10-00
<i>(b)</i>	<i>Discount</i>	
	The discount contemplated in section 18(1) of the Act to be applied to the penalty amount given in column 7 of schedule 3, the result of which is given in column 8 of the said schedule, subject to regulation 12(1):	10%
<i>(c)</i>	<i>Fees</i>	
	The fees which may be charged for any document, order or action in terms of section ? of the Act, are the following:	Amount
	(i) Ascertaining demerit points position in terms of section 18(1) of the Act	USD 20-00
	(ii) <i>(Form Points as shown in Schedule 2)</i> ??	USD ??
<i>(d)</i>	<i>Maximum Threshold of Demerit Points for driver or individual vehicle disc</i>	
	The maximum number of demerit points contemplated in regulation ?, which if exceeded results in the suspension of a driving licence, PrDP or operator disc:	12
<i>(e)</i>	<i>Maximum Demerit Point Threshold for Operator Registration or RCP Registration</i>	
	The maximum number of demerit points contemplated in regulation ?, which if exceeded results in the suspension of the registration of a depot of an operator or a responsible competent person:	
	1-20 vehicles	12 points for every vehicle
	21-40 vehicles	11 points for every vehicle
	41-60 vehicles	10 points for every vehicle
	61-80 vehicles	9 points for every vehicle
	81-100 vehicles	8 points for every vehicle
	101-120 vehicles	7 points for every vehicle
	121 or more vehicles	6 points for every vehicle

SCHEDULE 2

[Note: The forms below will be submitted to the Commission for approval and must be used by the countries in substantially the same format.]

Form Reference	Name and Type of Form	Legislation references	
		Act	Regulations
Violation Notice			
Roadside	Violation Notice issued at the roadside and served in person, on which is provided: payment details, submission that may be made and general information	23	3(2)
Electronic	Violation Notice issued and served electronically, together with payment details, submission that may be made and general information	23	3
Submission			
Submission	Submission completed by transgressor and signed before scanning and uploading to the Transgression System, together with supporting documentation	22	6
Nomination of driver			
Nomination	Nomination of driver or person in control by operator or owner of vehicle	6	4
Ascertaining demerit points position			
Position	Ascertaining road traffic and transport transgression history and demerit points in respect of driver or operator		
Notifications to transgressors			
Points	Electronic notification of recording of transgression and corresponding demerit points on the Transgression System		15(3)
Suspend	Electronic notification of suspension and/or cancellation of driving licence, PrDP, Operator Disc, Operator Registration or RCP Registration		16

SCHEDULE 3

Categories of offences and violations, penalty units, penalty and discount amounts and demerit points in terms of section

Key to columns in Schedule:

Column 1	Item number
Column 2	Charge code
Column 3	Short statutory reference to Act
Column 4	Short charge wording - reference to Act
Column 5	Classification of offence, major violation and minor violation
Column 6	Penalty
Column 7	Demerit Points
Column 8	Penalty amount (USD)
Column 9	Discount amount (USD)
Column 10	Discounted amount (USD)
Column 11	

Key to abbreviations in Schedule: