

**COMESA-EAC- SADC TRIPARTITE  
VEHICLE LOAD MANAGEMENT**

**MODEL LAW**

Version 3 Draft 1

2018-04-08

# VEHICLE LOAD MANAGEMENT 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 a framework for the regulation of vehicles causing excessive damage to the road network in terms of the administrative law; To provide for the management of loads on vehicles; To provide for the management of abnormal loads on vehicles; To provide for the implementation of a road transport management system; to repeal the [Click here to enter text.](#) (Act [Click here to enter text.](#) of [Click here to enter text.](#)); and to provide for matters connected therewith.**

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BE IT ENACTED by the Parliament of Click here to enter text. as follows:

## CHAPTER I: DEFINITIONS

### 1 Definitions

In this Act, unless the context otherwise indicates-

“**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]*;

“**axle**” in relation to a vehicle, means a device or set of devices, whether continuous across the width of the vehicle or not, about which the wheels of the vehicle rotate, and which is so placed that, when the vehicle is travelling straight ahead, the vertical centre-lines of such wheels would be in one vertical plane at right angles to the longitudinal centre-line of that vehicle;

“**axle unit**” in relation to a vehicle, means a set of two or more parallel axles of such vehicle which are so interconnected as to form a unit;

“**consignee**” in relation to goods transported or to be transported by a vehicle means the person who is named or otherwise identified as the intended consignee of more than 500 000 kilograms of goods in a month in the goods declaration for the consignment and who receives such goods after they have been transported by road;

“**consignor**” means the person or body of persons who is named or otherwise identified as the consignor of goods in the goods declaration relating to the transportation of more than 500 000<sup>1</sup> kilograms of goods in a month by road or engages an operator of a vehicle, either directly or indirectly or through an agent or other intermediary, to transport the goods by road or has possession of, or control over, the goods immediately before the goods are transported by road or loads a vehicle with the goods, for transport by road, at a place where goods are stored in bulk or temporarily held but excludes a driver of the vehicle, or any person responsible for the normal operation of the vehicle during loading;

“**foreign operator**” means an operator who undertakes road transport with a vehicle which is registered in a contracting country other than *[insert country name]*;

“**Gazette**” means the *[insert reference to the country’s official gazette]*

“**government institution**” means any government ministry, department or public entity

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<sup>1</sup> This number needs to be discussed – it may have to differ from country to country depending on the size of the economy/population/manufacturers.

reporting to a ministry or a department;

“**mass**” in relation to this Act, means the force exerted by a vehicle on the pavement, where that force consists of the tare of that vehicle together with the weight of the load that it is carrying;

“**maximum permissible mass**” in relation to a vehicle means the maximum mass allowed in terms of this Act;

“**Minister**” means the Minister responsible for Transport;

“**motor vehicle**” means any self-propelled vehicle and includes-

- (a) a trailer;
- (b) a semi-trailer
- (c) a vehicle the tare of which exceeds 30 kilograms and having pedals and an engine or an electric motor as an integral part thereof or attached thereto and that can be propelled by means of such pedals, engine or motor or both such pedals and engine or motor, but does not include-
  - (i) a pedestrian controlled vehicle propelled by electrical power derived from storage batteries;
  - (ii) a vehicle the tare of which is less than 230 kilograms, and which is specially designed and constructed, and not merely adapted, for the use of a person suffering from a physical defect or disability and is used solely by such person;

“**operate on a public road**” in relation to a vehicle, means to use or drive a vehicle or to permit a vehicle to be used or driven on a public road, or to have a vehicle or to permit a vehicle to be on a public road;

“**operator**” means an operator registered in terms of the Inter Regional Transport Act<sup>2</sup>

“**owner**” means the person registered as the owner of a vehicle [*include reference to the Road Traffic Model Law as adopted*];

“**pavement**” consists of the durable surface layer of a road and the selected

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<sup>2</sup> This definition should also include a reference to domestically registered operators. The reference to the Inter -Regional Road Transport Act is to the Model Law being drafted to enable the implementation of the Tripartite Cross Border Road Transport Agreement.

load bearing layers underneath

**“penalty point system”** means the system referred to in section 12;

**“person”** includes an incorporated entity or a partnership;

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

**“public road”** means any road, street or thoroughfare or any other place which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access and includes-

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge, culvert, causeway, ferry, ford or drift traversed by any such road, street or thoroughfare;
- (d) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare;

**“roads authority”** means *[include reference to the authority responsible for vehicle load management]*;

**“semi-trailer”** means a trailer having no front axle and so designed that at least 15 percent of its tare is super-imposed on and borne by a vehicle drawing that trailer;

**“this Act”** includes any regulation or guideline issued in terms of this Act

**“truck-tractor”** means a motor vehicle designed or adapted-

- (a) for drawing other vehicles; and
- (b) not to carry any load other than that imposed by a semi-trailer or by ballast,
- (c) but does not include a tractor or a haulage tractor;

**“vehicle”** means a device designed or adapted principally to travel on wheels and includes a semi-trailer, a truck-tractor and a haulage tractor;

**“weighing device”** means a weighbridge or any other apparatus, whether installed in a fixed position or mobile, which is intended for use for determining the mass of vehicles, laden or unladen;

**“weigh station”** means the entire premises where a weighing device is installed.

## CHAPTER II: MASS MANAGEMENT

### PART I: General

#### **2 Weigh station to be accredited and audited**

(1) Every weigh station that is used to enforce this Act must be accredited in the prescribed manner.

(2) The Minister may determine operational standards for weigh stations, incorporating key performance indicators, in accordance with which a weigh station used to enforce this Act, is evaluated for auditing.

(3) Any weigh station that is used to enforce this Act must be audited annually, by an independent person, measuring the performance of that weigh station against the operational standards determined by the Roads Authority in terms of subsection (2).

#### **3 Permissible mass for vehicles using the road network**

(1) The Minister must prescribe the maximum permissible mass for a wheel, axle, axle unit, vehicle or a combination of vehicles operated on a public road.

(2) A person may not operate a vehicle while that vehicle exceeds the maximum permissible mass prescribed in terms of subsection (1).

#### **4 Person liable for violation**

(1) Subject to subsection (4) and in the case of a vehicle registered in *[country]*, the person registered as the operator in terms of the Cross-Border Road Transport Act *[insert reference to the Model Law as adopted in -country]* is liable for any violation in terms of this Act.

(2) When a manager, agent or employee or the driver of a vehicle of an operator or owner does or omits to do anything that would have constituted a violation in terms of this Act, the operator or owner, is regarded to have committed that act or omission personally in the absence of evidence indicating that-

- (a) he or she did not connive at or permit such act or omission;
- (b) he or she took all reasonable measures to prevent such act or omission; and

- (c) the act or omission did not fall within the scope of the authority of or during the employment of that manager, agent or employee,

and that manager, agent or employee may be held liable for a violation in terms of this Act.

(3) The conviction of the operator or owner does not absolve the manager, agent or employee in question from liability in terms of this Act.

(4) Notwithstanding the provisions of any other law, where different operators or owners are registered for different vehicles in a combination of vehicles, the operator or owner registered for the truck tractor or haulage tractor of that combination of vehicles is liable for any violation in terms of this Act in relation to that combination of vehicles.

(5) The Minister may prescribe regulations in terms of which the consignor or the consignee in relation to a load carried by a vehicle that is found to be exceeding the prescribed maximum permissible mass may be held responsible for the payment of the security bond or the overload fee prescribed in terms of this Act and in which case, any reference in this Act to the owner or operator of a vehicle or combination of vehicles of which the mass exceeds the prescribed maximum permissible mass includes a reference to the consignor or the consignee of the load of the vehicle found to exceed the prescribed maximum permissible mass.

## **5 Consequences of exceeding permissible mass**

(1) Notwithstanding the provisions of any other law to the contrary, operating a vehicle or a combination of vehicles while the prescribed maximum permissible mass is exceeded constitutes a violation that must be adjudicated in the prescribed manner in accordance with the administrative law contemplated in *[insert reference to article/section of constitution which ensures due process]*.

(2) The security bond or overload fee imposed in terms of this Act for exceeding the permissible maximum mass of a vehicle or a combination of vehicles, must be calculated taking into account –

- (a) the cost of additional road pavement consumption by a vehicle or combination of vehicles that exceeds the prescribed permissible mass;
- (b) the weighted average distance that goods vehicles travel per journey;
- (c) an apprehension level factor; and
- (d) a punitive factor that includes an administrative cost recovery factor.

(3) The monetary value referred to in subsection (2)(a) must annually be adapted

in accordance with the cost of pavement construction.

(4) Notwithstanding any law to the contrary, a vehicle or combination of vehicles that is found to be of a mass in excess of the prescribed maximum permissible mass, may be detained until the load of that vehicle or combination of vehicles is rectified and a security bond as contemplated in subsection (5) may be required to be paid by the operator or owner, as the case may be, of that vehicle or combination of vehicles before the vehicle concerned is allowed to be released.

(5) The security bond payable by the operator or owner of a vehicle or combination of vehicles is equal to the fee to be imposed on the operator or owner of that vehicle or combination of vehicles after the conclusion of the adjudication referred to in subsection (1).

(6) Any security bond or overload fee imposed in terms of this section must be paid into the Road Fund established in terms of *[insert reference to the section and law establishing the road fund, if any, otherwise determine where the money needs to be paid]*.

(7) The Roads Authority must annually publish the level of overload fees and the security bond, including any other fee contemplated in this Act, by notice in the Gazette.

(8) The adjudication procedure prescribed in terms of subsection (1), must provide for the operator or the owner, as the case may be, to make representations to the Roads Authority within the prescribed period after having paid the security bond referred to in subsection (5), providing reasons why he or she is not liable to pay the overload fee.

(9) Should the operator or owner fail to make representations within the prescribed period the security bond paid by that operator or owner, on the date on which the prescribed period lapses, is retained by the Roads Authority in settlement of the overload fee and the adjudication of the violation is considered to have been concluded.

(10) If the operator or owner, as the case may be, in terms of the adjudication referred to in subsection (1) is found not to be liable to pay the overload fee, the security bond paid by that operator or owner must be refunded to that operator or owner.

(11) If the operator or owner, as the case may be, in terms of the adjudication referred to in subsection (1), notwithstanding him or her having submitted reasons to the Roads Authority to that he or she be refunded with the amount of the security bond that her or she paid, is found to be liable to pay the overload fee, the security bond must be retained in the Road Fund in settlement of the overload fee.

## **6 Adjudication**

(1) The Roads Authority must administer the adjudication of overload violations as contemplated in section 5(1).

(2) The Roads Authority may for the adjudication of overload violations, appoint an adjudicator, who must have substantial knowledge of the administrative law and of vehicle load management.

(3) The adjudicator may evaluate any submissions made by an operator or owner in relation to the adjudication of an overload violation and for this purpose may undertake any investigation that he or she considers necessary.

(4) The 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.

## **7 Presumption in relation to the mass of a vehicle or combination of vehicles**

(1) Notwithstanding any provision in any other law, where in the adjudication of a violation in terms of this Act, or the review of a decision taken in terms of this Act, evidence to prove that violation is given of mass ascertained by means of a weighing device, that mass is, subject to subsection (2), deemed to be correct in the absence of any evidence to the contrary.

(2) Every weighing device must be installed in accordance with the relevant standard incorporated into a regulation made in terms of section 14, in the manner contemplated in that section.

(3) The Roads Authority must at all times and in respect of every weighing device, be in possession of a certificate stating the date on which such verification has been done, which date may not be earlier than one year before the date of the alleged violation, and also stating that the weighing device concerned has been verified to be operating correctly and that the person issuing the certificate is qualified to do so.

(4) The person issuing the certificate referred to in subsection (3) must be competent to do so and must have a qualification approved by the Minister.

## **8 Presumption in relation to gross vehicle mass of motor vehicle**

In any adjudication in terms of this Act for a violation in relation to the gross vehicle mass of a motor vehicle or a vehicle-

- (a) any document purporting to have been issued by the manufacturer

of such motor vehicle and stating the gross vehicle mass of the particular model of motor vehicle; or

- (b) in the absence of evidence as contemplated in paragraph (a), a certificate purporting to have been issued by a vehicle testing station and specifying the gross vehicle mass of the model of motor vehicle,

is prima facie evidence of the gross vehicle mass of the model of motor vehicle concerned.

## PART II: ABNORMAL LOADS

### 9 Abnormal load

(1) The Roads Authority may, in the prescribed manner, authorize the owner or operator of a vehicle or a combination of vehicles of which the indivisible load in terms of mass, length, width or height does not comply with the maximum permissible mass contemplated in section 3, or with the length, width or height as to operate that vehicle or combination of vehicles on a public road.

(2) The Roads Authority must by notice in the [*Insert reference to country-official gazette*] publish guidelines in accordance with which an authorisation referred to in subsection (1), must be issued.

(3) The Roads Authority may impose conditions in relation to each authorisation individually in accordance with the requirements of the vehicle or the load concerned.

(4) The Roads Authority may impose a fee for granting the authorisation referred to in subsection (1), which fee may include-

- (a) the administrative cost of granting the authorisation;
- (b) the estimated cost of the damage to the public road that the excess mass may cause, calculated in accordance with internationally accepted pavement design principles;
- (c) the cost, if any, of escorting the motor vehicle concerned, if necessary; and
- (d) any other reasonable cost relevant to operating a vehicle on a public road while the mass of the vehicle concerned exceeds of the maximum permissible mass.
- (e)

## PART III: PERFORMANCE-BASED SCHEME

### 10 Performance based scheme

(1) The Roads Authority may accredit a performance-based scheme providing for-

- (a) the screening and approval of prospective participants;
- (b) performance standards;
- (c) the monitoring of performance of participants to the performance-based scheme; and
- (d) a code of conduct to be binding on operators or owners, consignors or consignees or any other person identified in the logistics chain and which provides for amongst others, -
  - (i) the sharing and formalisation of industry best practices;
  - (ii) mandatory and audited parameters for all aspects of road freight logistics operations including key areas such as driver behaviour, vehicle safety and maintenance and risk assessed operating methods;
  - (iii) the improvement of safety levels,
  - (iv) the reduction environmental impact;
  - (v) the promotion of professionalism through tried and tested operating procedures; and

(2) The Roads Authority, in terms of a performance-based scheme, may impose duties and liabilities in terms of this Act on the consignor or the consignee or any other person identified in the logistics chain.

(3) An operator or owner, consignor or consignee or any other person identified in the logistics chain, who is part of a performance-based scheme, may be exempted by the Roads Authority from a provision of this Act or the Road Traffic Act [*insert reference to domestic road traffic act*] in terms of that scheme and on the conditions determined by the Roads Authority.

(4) The Minister may provide or negotiate with any other Minister to provide an incentive scheme to an operator, consignor or consignee who is part of an accredited performance-based scheme.

(5) An operator, owner, consignor or consignee or any other person identified in

the logistics chain, who transgresses the conditions of the performance-based scheme, may be prohibited for a period from taking part in any such scheme.

## PART IV: MISCELLANEOUS

### **11 Powers of *[insert reference to officers authorised to enforce this Act]***

(1) A *[insert reference to officers authorised to enforce this Act]* is authorised to detain a vehicle or a combination of vehicles that has after having been weighed, been found to be overloaded, until that load has been rectified to the permissible maximum mass, as contemplated in section 3(2).

(2) A *[insert reference to officers authorised to enforce this Act]* may in the case where a vehicle has evaded a weighbridge or absconded from a weighbridge, follow that vehicle and escort it to the weighbridge closest to where that vehicle is found and that vehicle may be detained at that weighbridge until a security bond of the prescribed amount has been paid in settlement of that evasion or abscondment, and if the vehicle is found to exceed the prescribed permissible maximum mass, may act in relation to that vehicle as determined by this Act.

(3) In the enforcement and the adjudication of a violation under this Act, the fact that any person purports to act or has purported to act as a *[insert reference to officers authorised to enforce this Act]*, is prima facie evidence of his or her appointment.

### **12 Demerit points system**

(1) The Minister may prescribe a demerit points system for the successful enforcement of this Act and that system may provide for-

- (a) every violation in terms of this Act to be accorded demerit points;
- (b) the cancellation or suspension of the operator card issued in terms of section xx of the Inter Regional Road Transport Act and *[insert reference the national law in terms of which operators are registered, if any]* in relation to a vehicle used in a transgression of this Act when a prescribed demerit points saturation level is reached;
- (c) the suspension of the vehicle license of that vehicle when a prescribed penalty point saturation level is reached;
- (d) the suspension and cancellation of an operator card issued in terms

of the [*Cross-Border Road Transport Act or the Insert reference to the national law that regulates operator registration, if any*]; and

- (e) any other measure that is reasonably necessary for the effective implementation of a demerit points system.
- (2) Demerit points may be incurred in relation to the transgressor or the vehicle or both.
- (3) The demerit points system prescribed in terms of this section must be fair and reasonable.

### **13 Appeal**

(1) Any person, who feels aggrieved by a decision taken in relation to the adjudication of an offense in terms of this Act, may appeal in the prescribed manner to the [*Insert reference to the relevant appeals body (transport appeals committee/Minister)*].

(2) A decision of the [*Insert reference to the relevant appeals body (transport appeals committee/Minister)*] taken in terms of this Act may be reviewed by a competent Court in terms of the rules of the administrative law.

### **14 Regulations and standards**

- (1) The Minister may make regulations consistent with this Act with regard to-
- (a) the permissible mass of a vehicle;
  - (b) a system for the authorisation of the operation of a vehicle carrying an abnormal load as contemplated in section 9;
  - (c) the manner of adjudication of a violation in terms of this Act;
  - (d) the fees to be paid in relation to an overload violation in terms of this Act;
  - (e) the security bond to be paid in relation to a violation in terms of this Act;
  - (f) a demerit points system in relation to a violation in terms of this Act;
  - (g) the manner of appeal against a decision in terms of the adjudication in terms of this Act; and
  - (h) any other matter for the better 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 (6) 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 Member States 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.

## **15 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.

## **16 Delegation of powers and duties**

(1) The Minister may delegate or assign to any person or government institution, any power or duty conferred or imposed on the Minister by this Act, except the power to make regulations under section 14.

(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 or government institution to perform any function in terms of this Act, including the appointment and functions of a transport inspector.

## **17 Violations and Penalties**

In addition to exceeding the prescribed permissible mass for a vehicle or combination of vehicles, it is a violation -

- (a) to evade a weighbridge;
- (b) to abscond from a weighbridge after having been directed to that weighbridge; or
- (c) not to heed any instruction from a *[insert reference to officers authorised to enforce this Act]* or any person operating a weigh station or weighing device,

and in the case of any of the above violations being committed, the driver and the owner or operator of the vehicle concerned may both be held liable for the violation and the violation may be adjudicated in

terms of the procedure prescribed in terms of section 5.

## **18 Electronic weighing station management system**

(1) The Roads Authority must implement a Vehicle Load Management Information System to support all functions in the weighing chain, from screening of vehicles to be weighed, the identification of a vehicle and the operator of the vehicle, the weighing process, to the adjudication and payment of overload fees.

(2) The Vehicle Load Management Information System must be able to link weighing stations to each other and enable the Roads Authority to access the information of every weighing station.

(3) The Roads Authority must install enabling equipment such as violation detection equipment, weigh-in-motion weighing devices, cameras, number plate recognition apparatus, booms and traffic signals to enable the efficient operation of a weighing station.

## **19 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.

## **20 Transitional provision**

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.

## **21 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 19 is deemed to be a regulation made under section 14 and remains in force until repealed in terms of this Act or any other law.

**22 Government institutions bound**

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

**23 Short title and commencement**

This Act is called the "Vehicle Load Management 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

| <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> |
|                            |                 |                                      |