



Support Materials

Setting up a Road Fund in a Commercialised Road Sector

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KEY QUESTIONS ASKED ABOUT INDEPENDENT ROAD FUND ADMINISTRATIONS

Source: Based on an article by Ian G. Heggie, Commercialising Management and Financing of Roads in Developing and Transition Countries, published (in full) in *Transport reviews*, 2003, Vol. 23, No. 2, 139-160.

Introduction

The key questions that are regularly asked about these road funds are: (i) is this simply earmarking under another name; (ii) can road users afford to pay the extra charges required to support additional road expenditures; (iii) how do these arrangements affect income distribution (i.e., do they simply benefit better off road users at the expense of the rest of the population); (iv) how do the arrangements affect inflation; and (v) why do you need a broad-based, public-private oversight board?

Is This Earmarking?

If the revenues going into the road fund continue to be collected under the government's tax-making powers, then the fee-for-service concept does constitute a form of earmarking. However, provided the revenues consist of charges related to road use, and the funds are proactively managed to strengthen financial discipline, most fiscal economists describe this as "benign" earmarking. It approximates closely to a user charging system, helps to improve allocative efficiency and does not abstract revenues away from other sectors. On the other hand, if the legislation supporting the road fund describes the payments by road users as a road tariff – and the money is no longer collected under the government's tax-making powers – then it does not constitute earmarking.

At least one country (Namibia) has already passed such legislation and has set up its road fund as a public enterprise. The legislation gives the Board powers to set their own road tariff within a framework agreed with the Ministry of Finance. Under this procedure, the board consults the Ministry of Finance, sets the tariff and submits it to the Minister (of Works) for a "no objection" (i.e., the Minister is not required to approve, or endorse the tariff, but simply to say that he does or does not object to it). It is still too early to say how well this procedure will work. However, although there is only one functioning public enterprise style road fund, the legislation passed on new road funds is getting increasingly flexible with more powers being delegated to the board. For example, the Malawi National Road Authority Act, 1997, gives the board powers to raise, "such road user charges as the Minister may, from time to time, on the recommendation of the Board and in consultation with the Minister responsible for finance, determine by order published in the *Gazette*." These powers have not been implemented and it is unlikely that the government would implement them for some time to come. Other countries are nevertheless studying the idea of delegated tariff setting and more examples are likely to appear in future.

Can Road Users Afford to Pay?

Road users regularly resist any attempts to get them to pay more on the grounds that they are already paying too much. This view is not entirely correct. A review of eight developing and transition countries carried out in the early 1990s, which attempted to separate user charges from general tax revenues, concluded that, "in three quarters of the countries studied, the user charge element ... was significantly less than total expenditures on roads and in some cases was even less than recurrent expenditures on roads" (Heggie, 1992, Annex 1). So it is not simply a question of how much road users pay. Rather, it is that the taxes and charges paid by road users are not always spent on roads. The key issue is thus to ensure that any extra payments by road users are spent on roads. When they are, it results in a win-win situation. The simple rule of thumb – each dollar saved on maintenance



increases vehicle operating costs by \$2 to \$3 (Thruscutt and Mason, 1991) – has been proved time and time again through country case studies.

A study in Honduras, involving a 100 km section of asphalt concrete road in hilly terrain, showed that a fuel levy of about \$0.10 per litre cost car users \$1.00, but saved them \$3.50 in vehicle operating costs, while it cost a heavy truck \$3.60, but saved \$11.80 in vehicle operating costs. The conclusion, “investing one-third of the additional vehicle operating costs now spent operating on bad roads [instead of on good roads], would save the road user the other two-thirds” (Zietlow and Bull, 2001). A more detailed analysis has looked at the benefit cost ratios of alternative maintenance strategies over a 50 year period, using pooled data from 33 developing and transition countries. It showed maintenance to be highly cost effective, with equivalent annual benefit-cost ratios that varied from 1.4 on roads carrying 300 vpd to 44.8 when traffic volumes reached 10,000 vpd (Heggie and Vickers, 1998, Box 2.1). No wonder that road users regularly state that they are willing to pay for better road maintenance¹.

How Does it Affect Income Distribution?

Road financing affects income distribution in two main ways. First, through the impact of road sector revenues and expenditures on the government’s overall budget and, second, through the way the road budget is spent. The direct impact on the budget was explored in detail through a series of country-based public expenditure reviews carried out in Africa during the late 1980s and early 1990s (the key ones were in Tanzania, Zambia, Cameroon and Nigeria). All revealed similar patterns. Too much was being spent on new works, too little was spent on maintenance (the costs of poor maintenance was simply passed on to road users through higher vehicle operating costs) and road user charges were far too low.

Specifically, the review in Zambia showed that the roads department was spending twelve times as much on new works (including heavy rehabilitation projects financed by donors) as it was on recurrent maintenance, and that road user charges were only covering 6 percent of the annual road budget. The balance of the revenue came from the government’s general budget (World Bank, 1992). It was thought that setting up a new style road fund would improve revenue mobilisation from road users and reduce the drain on public sector revenues which could then be freed up for other purposes. In practice, it resulted in the revenue from road user charges increasing from less than \$1 million in 1992 to well over \$7 million in 1999, mainly due to the new fuel levy that was added to existing fuel taxes. A review of five road funds in Africa has confirmed that, across all these countries, incremental user charges are now being collected (Gwilliam and Kumar, 2002). As a result, the road fund has reduced the drain on public revenues and freed up resources to support other public programs. However, there is no guarantee that the government will necessarily spend these extra revenues on those in need.

One of the early concerns expressed about the new style road funds was that the oversight boards might be captured by special interest groups and that this would bias spending priorities. The main fears were: (i) that insufficient funds would be spent on rural roads; (ii) providing better roads would not necessarily help non-motorised transport and the large number of pedestrians who use roads as footpaths; and (iii) better roads would not help the majority of the population who do not have access to private motorised transport. In the event, these fears have mainly proved to be unfounded. Many road funds allocate a specific (nominal) percentage of their revenues to rural roads, including those in Romania, Latvia (where the urban and rural proportions are combined), Laos, Nepal and throughout most of Africa. The same is not true of Latin America where most road funds only provide funds for national roads. However, although many road funds nominally allocate a proportion of their revenues for rural roads, disbursements typically lag behind and fall well short of targets. This is mainly due to lack of capacity to plan and implement road works through the rural road agencies. The road funds have nevertheless now made it possible to improve the rural road network, although more attention

¹ In countries as diverse as Guatemala, the Philippines and Zambia, representatives of the road transport industry told the government that they were willing to pay an additional surcharge, on top of all pre-existing fuel taxes, provided it was used to finance better road maintenance.



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needs to be paid to absorptive capacity to ensure that the available funds can be spent effectively (Gwilliam and Kumar, 2002).

The concerns about non-motorised transport, and people who do not have access to motorised vehicles, have been specifically addressed by some of the new style road funds. Practically all have a specific responsibility to finance road safety interventions and many of these deal with the interests of non-motorised transport and pedestrians. However, some have gone beyond this and have passed legislation which either empowers them to “finance, on a cost-share basis, roads, tracks and trails” (as in Malawi), “provide footpaths, cycle tracks and similar passageways” (as in Zambia), or enables them to do so by permitting them to finance, “such other relevant matters as may be determined by the board” (as in Ghana). The constraint on doing this has much more to do with weak rural institutions, which is the main reason why countries like Zambia are attempting to establish local road co-operatives to provide a framework within which the road fund can work to improve rural roads, tracks and trails.

Finally, some road funds, provide specific support for rural transport. For example, in Latvia, about 11 percent of road fund revenues are used to improve rural bus services. This compares favourably with New Zealand where Transfund spends about 5 percent of its revenues supporting regional bus services. Overall, the new style road funds therefore undertake a number of specific actions designed to address income distribution issues.

Does the Fuel Levy Increase Inflation?

The likely impact of higher user charges on inflation is an ongoing concern for Ministries of Finance. A higher fuel levy raises the pump price of transport fuel, increases vehicle operating costs and this will raise the price of a wide range of goods and services. These potential impacts were investigated in a detailed study undertaken in Zambia (World Bank, Knowledge base on road financing and road funds, www.worldbank.org/transport/roads/rh_fnds.htm). What it showed was that an additional fuel levy of \$0.10 per litre would raise the pump price of gasoline and diesel by \$0.14 per litre (the additional \$0.04 per litre was caused by the oil company and dealer margins, which are based on a formula, and VAT). This increases the price of gasoline by 20.1 percent and the price of diesel by 21.5 percent which raises vehicle operating costs by about 5 percent for cars and light trucks and by about 9 percent for heavy trucks. Finally, this raises the Consumer Price Index (CPI) for rural households, urban low income households and high income households by about 0.6, 0.8 and 1.2 percent respectively.

However, provided the money raised through the fuel levy is spent on road maintenance, it will reduce vehicle operating costs. Using data on the Zambia vehicle fleet, combined with information about the effect of road condition on vehicle operating costs (Haral and Faiz, 1988, Table 2-1), shows that improving the road condition from poor to fair will reduce vehicle operating costs by 14.5 percent, while improving it from fair to good will reduce them by a further 7.4 percent. So, if the increased spending on road maintenance is able to reduce the proportion of the road network in bad condition from 50 to 20 percent, and increase the proportion in fair and good condition by 15 percent respectively, overall vehicle operating costs would fall by nearly 8 percent. This would more than offset any increase in the CPI caused by the fuel levy. In the short term, the introduction of a fuel levy will therefore increase the CPI by a relatively small amount, but it will eventually end up reducing the CPI, provided the extra revenues are spent on improving maintenance.

Why a Broad-Based Oversight Board?

Ministers and officials are always suspicious about oversight arrangements and are concerned that they are designed to ensure that they “keep their hands in their own pockets”². This is clearly one of a

² “We want them to come to work. We want them to work five days a week. We want them to work 40 hours a week. We don’t want them to have to do something else in order to survive and we want them to keep their hands in their own pocket.”



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number of relevant considerations, but is not the most important one. Road users regularly state that they are willing to pay for roads, provided the money is spent on roads, the work is done efficiently and they have some say in the setting of priorities. The main purpose of having a broad-based oversight board, which includes representatives of road users and the business community, is thus to win broad-based support for the road program and its financing. Indeed, this role is often written specifically into the Terms of Reference of the oversight board. For example, the draft law to establish an oversight board in Romania (referred to as the Road Fund Consultative Council) states that, “the Council will undertake regular publicity campaigns to help win support for the annual road program and the need for adequate and stable funding”. So, far from being a set of interfering busy bodies looking over the Minister’s shoulder, the oversight board is mainly there to win public support for the road program and to defuse hostility towards the introduction of higher user charges.



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QUESTIONS TO BE ANSWERED BEFORE SETTING UP A NEW ROAD FUND ADMINISTRATION

Source: Original text from the World Bank's Road Financing and Road Funds Knowledge Base at <http://www.worldbank.org/transport>.

Introduction

This note was prepared to make clear that there are two fundamental things that government needs to do BEFORE anyone can prepare legislation to set up an independent road fund administration. Legislation is simply the formal written instrument that turns an agreed set of policies and procedures into a formal set of laws and regulations. And this cannot be done until the government:

- Clearly states the core policies and procedures it wishes to see included in the draft Bill to be considered by Parliament or, if using a Ministerial or Cabinet Decree, the policies and procedures to be included in the proposed decree;
- It has consulted the key stakeholders who are likely to be affected by the legislation (or decree), has explained the options and preferred solutions, and has achieved sufficient consensus to make the proposed road fund administration a workable solution. This is usually accomplished by way of public consultations exercise. Often, the consultations proceed from a "Green" consultation paper, through a "White Paper" (i.e., an agreed statement of policy), to a draft Bill.

The following list of issues have been prepared to inform the above two-stage process and to identify the types of questions that Ministers need to be able to answer, BEFORE the departmental draftsmen (or consultants) can prepare any legislation.

What Will the Road Fund Finance?

- (i) Will it finance national roads and also make some contribution to local government roads?
- (ii) Will the contributions to local governments be made on a cost-share basis?
- (iii) Will it finance maintenance only (including road safety and administration of the road fund), or will it also finance minor improvements and new works and will the latter sums be subject to a cap?
- (iv) Will it have powers to borrow for investment and, if so, will there be a cap on such borrowing?
- (v) Will it be permitted to invest surplus funds and, if so, in what type of monetary instruments?

Where Will the Revenues Come From?

- (i) Will the main source of revenues be a levy added to the price of gasoline and diesel fuel (making sure that the road fund does NOT abstract revenues away from any other sectors)?
- (ii) How will non-road users be exempted from paying the diesel levy (particularly important for farmers)?
- (iii) What other revenues will be paid into the road fund (e.g., vehicle license fees, a supplementary heavy vehicle surcharge, tolls, grants from the Treasury, etc.)?
- (iv) How will the level of these charges be set?



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- (v) How will the revenues be collected and deposited into the road fund to minimize delays and leakage?
- (vi) Will the road fund be an account at the Central Bank, or will the funds be deposited into one or more commercial bank accounts?

How Will the Road Fund be Set Up?

- (i) What sort of legal instruments will be used to set up the road fund (e.g., a Budget Law, Decree, Parliamentary Resolution, or basic legislation)?
- (ii) Which Ministry will be designated as the Parent Ministry?
- (iii) Will the Minister, and any board of directors, publish the financial rules and regulations governing the way the road fund will be managed (e.g., in the Government Gazette)?

How Will You Ensure Good Governance?

- (i) Will there be a board of directors (i.e., an oversight board) to supervise management of the road fund?
- (ii) Will it be an Advisory Board, or will it manage the road fund in a non-executive capacity (i.e., be a board made up of part-time board members)?
- (iii) How many persons will be appointed to sit on the oversight board?
- (iv) Which organizations will they represent (e.g., concerned central government Ministries, representatives of local government, Chamber of Commerce, road transport associations, farming interests, etc.)?
- (v) How will board members be nominated and how will the chairman be selected?
- (vi) How will the road fund be audited and who will appoint the auditors?
- (vii) Will the audit report be tabled before Parliament and published?

Who Will Manage the Road Fund?

- (i) Will the oversight board delegate day-to-day management of the road fund to a Secretariat?
- (ii) Will the Secretariat be independent, or will it be made up of staff from the national road agency, or equivalent?
- (iii) Will the head of the Secretariat be appointed by the oversight board?
- (iv) Will the head of the Secretariat appoint all other staff, subject to confirmation by the board?
- (v) Will the Secretariat publish guidelines for dividing funds between the different road agencies, cost-share arrangements applicable to local government road agencies, and procedures for disbursing funds to all road agencies?
- (vi) Will there be a cap on staffing numbers (e.g., by restricting administrative expenses of specified percent of road fund revenues)?



Miscellaneous Questions

- (i) Will the Minister be entitled to give instructions to the board and, if so, must they be in writing and will any restrictions apply?
- (ii) Will any special penalties apply for misappropriation of funds?
- (iii) Will the road fund play any role in controlling overloading?
- (iv) Will the road fund be required to promote contracting out and/or better procurement practices?



STANDARD FORMAT FOR SETTING UP A ROAD FUND UNDER NEW LEGISLATION

Source: Heggie, Ian G. and P. Vickers. 1998. Commercial Management and Financing of Roads. Technical paper 409. World Bank, Washington, D.C. This is a standard template that may be used to prepare basic legislation setting up an independent road fund administration.

Text of the Main Bill

A BILL

entitled

An Act to make provision for the establishment of the National Road Fund Administration (the Administration) and for purposes connected therewith and incidental thereto. Enacted by the Parliament of as follows:

PART 1—Definitions

1. This Act may be cited as the National Road Fund Administration Act, 199.., and shall come into force on such date as the Minister shall, by notice published in the gazette, appoint.
2. In this Act, unless the context otherwise requires—
 - “Administration” means the National Road Fund Administration;
 - “Board” means the Board of Directors of the National Road Fund Administration;
 - “Secretary” means the Executive Secretary of the National Road Fund Administration;
 - “Minister” is the minister responsible for public roads.....³
 - “public road” has the same meaning as that ascribed to it in the Public Roads Act;⁴
 - “road” has the same meaning as that ascribed to it in the Public Roads Act;
 - “road agency” includes any institution or body, whether or not incorporated, charged under any law with the responsibility of, or, designated as a road agency by the Minister, by notice published in the Gazette, for purposes of maintaining, rehabilitating or developing public roads.

PART II—Establishment of Administration

3. There is hereby established a body to be known as the National Road Fund Administration of which shall—
 - (a) be a body corporate with perpetual succession;
 - (b) have a common seal;
 - (c) be capable of—
 - (i) acquiring, holding and disposing of real and personal property;
 - (ii) suing and being sued in its corporate name; and
 - (iii) doing or performing all such acts and things as a body corporate may legally do or perform.
4. (1) The purpose of the Administration shall be to—
 - (a) ensure that public roads are maintained and rehabilitated at all times;

³ It could also be the Minister of Transport, Minister of Finance, or Prime Minister’s Office.

⁴ The Act may need to be amended if the road fund intends to finance undesignated (community) roads.



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- (b) raise funds for the maintenance and rehabilitation of public roads;
- (c) advise the Minister on—
 - (i) the preparation and the efficient and effective implementation of the annual national roads program referred to in section ??; and
 - (ii) the control of overloading of vehicles on public roads.

Part III—Board Of Directors

5. (1) The operations of the Administration shall be managed and controlled by a Board which shall consist of the following members to be appointed by the Minister—
- (a) five ex-officio members, being nominees of each of the following Ministries:
 - (i) Ministry of Finance,
 - (ii) Ministry of Works,
 - (iii) Ministry of Transport and Communications,
 - (iv) Ministry of Local Government,
 - (v) Ministry of Economic Planning and Development.
 - (b) five non-governmental members, being nominees elected from the following constituencies:
 - (vi) Chamber of Commerce and Industry;
 - (vii) Bus and Taxi Operators Association;
 - (viii) Road Transport Operators Association;
 - (ix) Institution of Engineers;
 - (x) National Farmers Association; and
 - (c) two other non-governmental, being nominees of the Board. *[Alternatively, two members, being nominees of one urban and one rural district council].*
- (2) All ex officio members shall not be officers holding office below the level of Director or equivalent and shall be appointed by their respective ministers.
- (3) The members of the Board shall, at the first meeting of the Board, elect a Chairperson and Vice-Chairperson from among their members. The Chairperson shall be endorsed by the Minister.
- (4) Members of the Board shall not, by virtue only of their appointments to the Board, be deemed to be officers in the public service.
- (5) The names of all members of the Board as first constituted and every change in membership thereafter shall be published in the *Gazette* by the Minister.
- (6) A member of the Board, other than an *ex officio* member, shall hold office for a period of three years from the date of his or her appointment and shall be eligible for re-appointment for one further term at the expiration of that period.
6. If a member of the Board acquires any pecuniary interest, direct or indirect, in any contract proposed contract or in any other matter in which private interests conflict the duties as a member and which is the subject of consideration by the Board, shall, as soon as is aware of the interest in the contract or proposed contract or any other matter, disclose such facts to the Board.
7. (1) The Board may appoint such number of committees as may be necessary for the proper discharge of the functions of the Board consisting of some members and such other persons with prescribed qualifications, and define the objectives of such groups or committees.



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(2) The provisions of this Act relating to meetings of the Board shall apply *mutatis mutandis* to the meetings of the committees.

(3) The Board shall appoint the chairman of each committee from amongst the members of the board.

8. The Board may, in its discretion, at any time and for any length of period invite any person to attend any deliberations of the Board, but such person shall not be entitled to vote on any matter at any meeting of the board.

9. The office of a member, other than an *ex officio* member, shall be vacated—

- (a) upon the expiry of the period of appointment;
- (b) upon his death;
- (c) if he is adjudged a bankrupt;
- (d) if he is sentenced for an offence against any written law to a term of imprisonment of, or exceeding, six months, otherwise than as an alternative to, or in default of, the payment of a fine;
- (e) if he is convicted of an offence involving fraud or dishonesty;
- (f) if he has been absent from 3 consecutive meetings of the Board of which he has had notice without the permission of the chairman;
- (g) if, in the opinion of the Board, he becomes by reason of mental or physical infirmity, incapable of performing his duties as a member of the Board.

10. (1) The Board shall meet at such place and at such times as the Chairperson may determine and shall meet at least once per month.

(2) Ordinary meetings of the Board shall be convened by at least fourteen days written notice to the members by the Chairman. The Chairman may, at his discretion, and shall at the written request of not less than four members of the Board and within seven days of such request, convene a special meeting of the Board to transact any extraordinary business on a date specified in the request. A written notice shall be addressed and sent to the members at least three days prior to the date of the meeting.

(3) The Chairman or, in his absence, the Vice-Chairman shall preside at each meeting of the Board. The quorum necessary for the transaction of the business shall be five members present at any meeting of the Board.

(4) When the Chairman and Vice-Chairman are both absent, the members present shall appoint a Chairman to preside at the meeting.

(5) Subject to the provisions of this Act, the Board may make standing orders for the regulation of its proceedings and business or the proceedings and business of any of its committees and may vary, suspend or revoke such standing orders.

(6) The minutes of every meeting of the Board shall be recorded in a register by the Secretary of the Board and confirmed at the next succeeding ordinary meeting.

(7) The Board decisions shall be taken by the majority vote and, when the votes are equal, the Chairman has a casting vote, with dissenting members having the right to have their views recorded in the minutes.

(8) Members of the Board shall be paid from the road fund such allowances as the Board may, subject to the approval of the Minister, determine and the Board may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board or of a committee of the Board in connection with the business of the Board or the committee.

Part IV—Functions and Powers of the Board

10. The functions of the Board are:

- (a) to administer and manage the road fund;



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- (b) ensure that all tenders for the maintenance, rehabilitation and development of public roads are conducted through open and competitive bidding, in a transparent and fair manner;
- (c) to improve arrangements for collecting road user charges to minimize avoidance and evasion;
- (d) to recommend to the Minister, from time to time, appropriate levels of road user charges, fines, penalties, levies or any other sums to be collected under this Act and paid into the Fund;
- (e) identify and recommend to the Minister, donor funding for the maintenance, rehabilitation and development of public roads;
- (f) to establish the allocation criteria to be used to divide moneys between the various road agencies;
- (g) to ensure that road agencies carry out effective monitoring of the condition of all public roads for the purpose of timely implementation of road maintenance, rehabilitation and development programs;
- (h) to institute an integrated and coordinated approach to planning of road works by establishing the form and content of the Annual Road Program;
- (i) to provide guidance and establish procedures to be followed in the preparation of the Annual Road Program by the various road agencies;
- (j) to review and approve the Annual Road Program;
- (k) to establish procedures for disbursing funds for the Annual Road Program;
- (l) to prepare, publish and submit to the Minister audited annual accounts of the Fund
- (m) to publish periodic reports on the activities and achievements of the Administration and make the reports available to the general public.

12. Subject to the Finance and Audit Act, the Board may raise on behalf of the Administration, moneys by way of loans or bank overdrafts on such reasonable terms and conditions as the Board may in writing agree with the lender.

13. The Board shall be responsible and accountable to the Minister for ensuring efficiency, transparency and propriety in the—

- (a) collection and utilization of public funds under this Act;
- (b) conduct of its business; and
- (c) operations and activities of the Administration.

[The legislation will often include a special section here outlining the procedures to be followed, and penalties which may apply, if the Minister has reason to suspect that the Board has failed in its performance, has performed any act without due authority, or has willingly participated in any fraudulent activity.]

Part V—Secretariat

15. (1) The Board will be assisted by a Secretariat headed by an Executive Secretary. The Secretariat shall be responsible for the day-to-day management of the Administration and for implementation of the decisions of the Board.

(2) The Executive Secretary shall be appointed by the Board and shall perform such functions as the Board may direct or delegate to him or her. The Executive Secretary will also act as secretary to the Board.

(3) The terms and conditions of employment of the Secretariat shall be decided by the Board based on a comparison of best practice in other similar organizations.

Part VI—Establishment of Road Fund

16. (1) There is hereby established a fund to be known as the Road Fund.



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- (2) The Fund shall consist of—
- (a) such road user charges as may, from time to time, be determined by the Minister, by order published in the Gazette, on the recommendation of the Board;

[or, alternatively, “such road user charges as may, from time to time, be determined by the Administration and published in the Gazette in accordance with the relevant provisions of any regulations made under section 25;”]

- (b) such sums that may be appropriated by Parliament for purposes of the Fund.
- (c) such sums or assets as may accrue to or vest in the Fund whether in the course of the exercise by the Board of its function or powers, or otherwise;
- (d) grants, subsidies, bequests, donations, gifts, subscriptions from Government or any other person;
- (e) the sale of any property, real or personal, by or on behalf of the Administration;
- (f) sums received by the Fund by way of voluntary contributions;
- (g) penalties and fines imposed on overloaded vehicles; and
- (h) sums that may be donated or loaned by any foreign government, international agency or other external body of persons, corporate or undesignated.
17. (1) The purpose of the Fund shall be to finance—
- (a) the administrative expenses associated with the execution of the duties and responsibilities of the Authority and the management of the Fund;
- (b) routine, recurrent and periodic maintenance of public roads;
- (c) on a cost sharing basis, the routine, recurrent and periodic maintenance of local government roads and of undesignated roads, tracks and trails;
- (d) any monetary contribution required to be made by the Government for the implementation and execution of a donor-funded project for the maintenance, rehabilitation or development of any public road;
- (e) such road safety projects as the Board may determine.
- (f) the enforcement of the limits on weights and dimensions of vehicles;
- (g) research related to the maintenance and development of roads.
- (2) Any surplus from the road fund, not exceeding percent of the total revenue collected or estimated to be collected in any financial year, may be utilized to finance such minor road works including upgrading of existing public roads as the Board may, on the recommendation of the road agencies, approve.

18. The Board shall ensure that in any financial year expenditures and commitments from the Fund shall not exceed the annual income of the Fund. If, however, in exceptional circumstances, the income of the Fund together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Administration, the Minister of Finance may make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister may determine, provided that such advances shall be repaid from the income of the Fund in the next financial year.

Part VII—Annual Road Program

19. An Annual Road Program(s) shall be prepared at least three months before the start of the new fiscal year in such form and containing such details as may be prescribed by the Board. The



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Program(s) shall be prepared by the road agencies responsible for maintaining the road network, or by agents designated for this purpose by the Board.

20. The Board shall review the Annual Expenditure Program and decide on -

- (a) the affordability of the overall program(s); and
- (b) the appropriateness of the amounts allocated for each class of road.

21. The Board shall transmit to the Minister of Public Works and Housing and the Directors of other road agencies together with the Minister of Finance the approved Annual Road Program(s).

22. Pursuant to Clause 10, the Board may recommend a rise in the level of the road tariff to ensure it generates sufficient revenues to finance the approved Annual Road Program(s), and shall provide the Minister with an estimate of the additional income to the road fund from such increases.

Part VIII—Accounts

23. (1) The Board shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the road fund in accordance with acceptable principles of accounting.

(2) The accounts of the road fund shall be audited annually by independent professional auditors nominated by the Board and approved by the Auditor General's Office. The expenses of the audit shall be paid out of the road fund.

(3) The auditors shall complete their audit of the accounts within three months of the end of each financial year and shall include in their report assessments relating to the achievement of the objectives of the Administration, compliance with the policies, procedures and criteria established by the Board, and the effectiveness of the management of the road fund.

(4) The Board shall, as soon as practicable, but not later than six months after the end of the financial year of the Administration, submit to the Minister an annual report on all the financial transactions of the road fund and on the work, activities and operations of the Administration.

(5) The Authority shall at all times comply with the provisions of the Finance and Audit Act.

24. (1) All sums received for the purposes of the Administration shall be paid into a banking account and no amount shall be withdrawn therefrom except under the authority of the Board and by means of cheques signed by such persons as are authorized in that behalf by the Board.

(2) Any part of the road fund not immediately required for the purposes of the Administration may, on the recommendation of the Board, be invested in such manner as the Board may, in its discretion, determine.

(3) The financial year of the Authority and the Fund shall be the period of twelve months commencing on the 1st of April of each year and ending on the 31st March of the following year. The first financial year may be shorter or longer than twelve months as the Board may determine, but in any case not longer than eighteen months.

Part IX—Miscellaneous

25. The Minister shall, by notice published in the *Gazette*, make regulations stipulating the detailed procedures to be followed by the Board regarding the works to be financed through the road fund, procedures to be followed in preparing the Annual Road Program, procedures for allocating funds between the different road agencies, arrangements for disbursing funds for road works, and the detailed financial management procedures to be followed by the Board.



Draft Regulations for the Management of the Road Maintenance Fund

[The regulations which accompany a new Road Fund Act, typically deal with the details which might need to be revised from time to time and which should therefore not be written into the primary legislation. The regulations are normally revised through a Statutory Instrument – a Ministerial Ordinance, or other notice published in the Government Gazette – which states the new rule and the applicable when it comes into force.]

NATIONAL ROAD FUND ADMINISTRATION REGULATIONS 199..

Regulations Dealing With Dates for Implementation

under s.25

1. These regulations may be cited as the National Road Fund Administration Regulations 199.. and shall come into operation on the date of publication in the Gazette.

under s.1

2. Within 14 days from the date of Presidential assent to the National Road Fund Administration Bill, the Minister shall cause a notice to be published in the Gazette appointing the effective date of the Act.

under s.5

3. Within 28 days from the effective date of the Act, the Minister in consultation with the various sectors required to be represented on the Board of the Authority, shall appoint members of the Board.

4. Within 14 days after expiry of the 28 days in Regulation 3, the Minister shall cause a notice of the members appointed to the Board to be published in the gazette, and specifying the place, date and hour of the first meeting of the Board.

under s.7

5. The Board may delegate any of its powers to committees consisting of such member or members of its body as it may consider fit, or expedient, and any committee so formed shall conform to any regulations of direction of the Board.

6. The Board and its sub-committees may appoint such study groups or committees as may be necessary for the proper discharge of its functions consisting of some members and other persons with such prescribed qualifications as may be required, and define the objectives of such groups or committees.

7. The Board and its sub-committees may co-opt any person to advise it during its deliberations, provided that any person so co-opted shall not be entitled to vote at any meeting of the Board or of its sub-committees.

8. For the better performance of its functions, the Board and its sub-committees shall, subject to the provisions of the Act, have power to:

(a) affiliate or cooperate with government departments, universities, technical colleges, persons engaged in the maintenance, rehabilitation or development of public roads and such other organizations, organizations or persons as may appear to the Board to be proper or beneficial to associate with;

(b) publish from time to time, such technical and other information as it deems necessary or expedient for the promotion of knowledge on the maintenance, rehabilitation and development of public roads.

**Regulations Defining Road User Charges and their Administration**

under s.16

9. The road user charges referred to in section 5 (2) (a) shall consist of
- (a) a surcharge on the price of gasoline and diesel fuel to be known as the fuel levy. The said fuel levy shall be a charge over and above ordinary import duties, general sales taxes and other charges on fuels, and shall be used exclusively as a source of revenue for the Road Fund.
 - (b) international transit charges to be paid by foreign vehicle operators using the roads of ...
 - (c) vehicle license fees.

The road user charges mentioned in paras (a) to (c) above shall be subject to revision by the Minister from time to time on the recommendation of the Board and upon such revision, the public shall be duly informed of the same through the press.

10. The road user charges shall, to the extent possible, be collected under contract and the proceeds shall be directly deposited into the Administration's bank accounts. Contracts will be entered into with the Oil Companies, the Department of Customs, the Ministry of Transport and Communications, and/or with private contractors. Otherwise, the collection shall be the responsibility of the Treasury, provided that having been so collected the moneys shall without delay be transferred by the Treasury to the Road Fund.

11. The Administration shall open and maintain separate bank accounts for each of the sources of funds allocated to the Road Fund.

12. All moneys provided by international donors for the Road Fund shall be given by the donor direct to the Fund and not through the Government.

13. Disbursement of moneys from any of the accounts holding donor funds shall be subject to the provisions of section 24 and the prior authority of the relevant donor.

Regulations Defining Responsibilities of the Board of Directors

under s.11

14. The Road Fund shall be managed by the Board who shall:
- (a) devise and put in place a mechanism for collecting road user charges;
 - (b) when relevant, devise and put in place arrangements for collecting from the Treasury any road user charges collected for the road fund;
 - (c) establish and publish the criteria to be used to divide road fund revenues between the different road agencies entitled to draw on the Road Fund, where such criteria may be based on the condition of the road network, the type of maintenance required (whether routine or periodic), the length of the road network, and the volume of traffic;
 - (d) negotiate an annual Framework Agreement with the Ministry of Finance establishing the procedures to be followed when adjusting the road user charges during the year concerned which shall include the general financial policies of the Administration, the maximum annual increase in the road user charges, the size of the Administration's administrative budget, and any matters which might have an impact on the Government's fiscal and macroeconomic policies;
 - (e) establish procedures for disbursing funds for works forming part of the approved Annual Road Program;



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- (f) establish and publish procedures which ensure that non-transport users of diesel are not unduly penalized by introduction of the road maintenance levy;
- (g) advise the Minister on ways to control the overloading of vehicles, particularly on international transit routes.

15. Major upgrading and new works will continue to be financed through the government's development budget and all financial resources made available for such purpose shall be channeled through the Road Fund.

Regulations Defining Responsibilities of the Secretariat

under s.15

16. The Secretariat will consist of no more than five regular staff who shall be appointed by the Board on the recommendation of the Executive Secretary. A firm of chartered accountants, or a bank, may be appointed to act as Secretariat or to assist the Secretariat.

17. Without prejudice to the generality of these regulations, the Secretariat shall be responsible for:

- (a) keeping proper accounts and records in respect of the Fund;
- (b) maintaining separate bank accounts for local and donor funds respectively in which shall be recorded all receipts into the Fund and all disbursement from the Fund;
- (c) preparing and submitting for audit in respect of each financial year a balance sheet, a statement of income and expenditure, and a statement of cash flow in such forms and manners as the Administration may prescribe;
- (d) preparing the Annual Report of the Fund in such form and with such content as may be prescribed by the Authority; and
- (e) arranging the business for meetings of the Board and its sub-committees.

18. The Administration shall, at such intervals as the Minister may, by order in writing require, submit to the Minister reports and financial statements in such form as the Minister may by like order determine, regarding the operations and activities of the Administration and the Fund.

Regulations Requiring the Fund to Publish its Operating Rules

under s.17

19. The detailed basis of the cost-sharing arrangements will be decided by the Administration and shall be published and revised from time to time.

19. Urban and Rural District Councils shall use revenue from rates, local taxes and other local revenue sources to contribute to the financing of routine and periodic maintenance of roads, tracks and trails under their responsibility..

20. Individuals and communities living in areas with unclassified roads shall also be entitled to receive funds for maintenance on a cost share basis. Such groups shall be required to register their interests in the roads, form themselves into local roads committees, and agree on cost-sharing arrangements for maintaining their roads.

21. Local roads committees may contribute their share of the costs in the form of materials, direct labor and, or alternatively, cash or by a combination of any or all of these.

22. Funds shall only be disbursed for goods and services forming part of the approved Annual Road Program according to procedures to be established by the Board.

23. Work undertaken by contractors with a value in excess of \$... shall be certified by a registered engineer and, once so certified, payment shall be made directly to the contractor.



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24. Work undertaken by small-scale contractors, or by force account, will be subject to similar controls to be agreed between the Administration, the Minister and the various District Councils.

Regulations Defining How Funds Will be Disbursed to Road Agencies

under s.19

25. The Annual Road Program shall allocate the revenues of the road maintenance fund to various categories of roads for the year, following the allocation criteria prescribed by the Board. Without prejudice to the other factors which the Board may take into account in determining the allocation criteria, some of the major factors to consider shall be the condition of the road network, the type of maintenance required (whether routine, recurrent or resurfacing), the length of the road network, and the volume of traffic.

26. Funds shall be withdrawn from the Road Fund on presentation of a cheque signed by two authorized signatories being either the chairperson of the Board and the Secretary, or one of them and a designated member of the Secretariat.

27. In the interim, and until such time as the road agencies have developed the capacity to prepare their submissions to the Administration, the Administration may enter into a contract with local consultants for the purposes of assisting the road agencies to prepare their individual road programs.

28. The consultants so appointed shall work in close consultation with the concerned central and local government agencies to assist the various road agencies with the preparation of their road maintenance, rehabilitation and development programs, set priorities, consolidate the individual programs into an overall Annual Road Program to fit within the available resources. Such plans shall include medium-term maintenance programs and longer-term rehabilitation and development programs.



ESTABLISHING A BOARD TO ADVISE THE MINISTER ON MANAGEMENT OF THE ROAD FUND

Source: Ian G. Heggie.

[This Ordinance has been adapted from a draft Order establishing a Road Fund Advisory Board. The road fund had already been set up under basic legislation.]

An Ordinance Providing for the Establishment of a National Road Fund Advisory Board

Ordinance

Article 1: National Road Fund Advisory Board

As provided for in the Law [number and date??], the Minister of Public Works & Transport hereby publishes the following Ordinance which sets down the details under which the National Road Fund Advisory Board will be appointed to advise the Minister of Public Works & Transport on all matters related to:

- (a) the financing of road construction, modernisation, administration, maintenance and repair of public roads; and
- (b) the management of the Special Fund for Public Roads

Article 2: Interpretation

2. In this order, unless the context otherwise requires –

“Appointed member” means a member of the Advisory Board appointed by the Minister under Article 3;

“Board” means the board constituted under Article 3;

“Fund” means the Special Fund for Public Roads established under Law no. ???;

“Minister” means the minister responsible for Public Works & Transport;

“Ministry” means the Ministry of Public Works & Transport;

“RD” means the National Roads Department under the Ministry of Transport.

Article 3: Composition of the National Road Fund Advisory Board

3. The Board will be appointed by the Minister and will consist of up to 12 members: the Director of Roads, 3 ex-officio members representing government departments, 6 members representing non-governmental organisations, and 2 members appointed by the Minister after consulting the Board. The members of the Board will be as follows:

- (a) (1) Director of Roads;
- (b) 3 ex-officio members, being nominees of the following Ministries:
 - (2) Ministry of Transport;
 - (3) Department of Local Public Administration;
 - (4) Ministry of Justice;
- (c) 6 non-governmental members, being nominees of the following organizations:
 - (5) Chamber of Commerce and Industry;
 - (6) National Association of Road Transporters;



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- (7) National Farmers Association;
 - (8) Council of Competition;
 - (9) Association of commercial banks;
 - (10) Association of County Councils.
- (d) 2 members appointed by the Minister after consultation with the Board.
4. The Minister will appoint one of the existing members of the Board as Chairman. Alternatively, the Minister may appoint an outsider following consultation with the Board. The ex-officio members of the Board will not be below the level of Director, or equivalent.
5. The Minister will publish the names of the Board appointed under Article 3 as a Supplementary Order in the Official Bulletin of [country].
6. An appointed member:
- (a) shall hold office for not more than 3 years from the date of appointment unless that officer resigns or vacates office under paragraph 7;
 - (b) may be re-appointed at the conclusion of his term of office;
 - (c) may resign by writing under his hand addressed to the Minister.
7. An appointed member shall vacate his office as a member:
- (a) if he has been absent from 3 consecutive meetings of the Board without the permission of the Chairman;
 - (b) if his nomination is cancelled by the organization responsible for nominating him;
 - (b) if he is, in the opinion of the Minister, unable or unfit to discharge the functions of a member of the Board.
8. Where an appointed member has resigned under paragraph 6 (c) or has vacated his office the Minister shall, by notice in the Official Bulletin of [country], fill that vacancy with a new appointment in accordance with paragraph 3 and the person so appointed shall hold office for the un-expired term of his predecessor.
9. If an appointed member acquires any pecuniary interest, direct or indirect, in any matter being considered by the Board, or in any other matter in which his private interests conflict with his duties as a member of the Board, he shall, as soon as he becomes aware of his interest in that matter or any other matter, disclose the facts to the Board and withdraw from all meetings at which such matters may be discussed.
10. The Board may establish sub-committees dealing with subjects like: Economics, User Charges, Audit and Environment. The Board may also invite additional non-voting technical specialists to attend any of its meetings.
11. Appointed members of the Board, together with sub-committee members, will be paid such allowances and expenses as the Minister may from time to time determine.

Article 4: Terms of Reference for the Board

12. The advice provided by the Board shall include, but not be limited to:
- (i) the overall size of the road program and the balance between the national road program and the programs prepared by the local authorities;
 - (ii) the methods used to establish priorities for both maintenance and new works, whether they are appropriate and any changes which might be desirable;
 - (iii) the general quality of the road works undertaken by the Roads Department and the local authorities and ways that it might be improved;
 - (iv) in the context of (i) above, the appropriateness of the [x/y] percent division of funds between the Roads department and the local authorities;
 - (v) the way in which the [y] percent of funds allocated to local authorities have been divided between the different local authorities;



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- (vi) the desirability of introducing arrangements for cost-sharing with local authorities to strengthen local resource mobilisation and the time scale over which such a system might be introduced;
- (vii) the effectiveness with which the funds due to the Fund are collected and deposited into the bank account(s) of the Fund;
- (viii) the desirability of borrowing funds, using the income of the Fund to service and repay the loans, and what limits might be imposed on such borrowing to ensure the continuing integrity of the Fund;
- (ix) the need to increase the income available to the Fund, how this might be done and the attitude of road users to any proposed increases in road user charges;
- (x) the scope and quality of the audit reports and other financial reports prepared by the Roads Department and the local government agencies receiving money from the road fund.

13. The Board will undertake regular publicity campaigns to help win support for the annual road program and the need for adequate and stable funding.

14. The Board will undertake regular sample surveys of road user attitudes to the road program, its strengths and weaknesses, and ways it might be improved.

15. In addition, the Board will provide advice on any other matters that may be referred to them by the Minister.

16. The Board will transmit their advice to the Minister through the minutes of each Board meeting and this will be supplemented by regular meetings between the Minister, the Chairman and the Director of Roads. The Minister will decide whether these minutes, or excerpts from them, should be made available to the public through press releases and in other ways.

Article 5: Meetings of the Board

14. The Board shall meet at such times and at such places as the Chairman may decide and shall preferably meet at least once per month for regular Board meetings.

15. The Chairman shall, at the written request of not less than four members of the Board, convene a special meeting of the Board to transact any extraordinary business on a date specified in the request. A written notice shall be addressed and sent to the members at least three days prior to the date of the meeting.

16. The Chairman shall preside at each meeting of the Board. Where the Chairman is absent, the members present shall appoint a Chairman to preside at the meeting.

17. The quorum necessary for the transaction of the business at all meetings of the Board shall be a majority of the members present, provided those members include 2 members representing government departments and 2 members representing non-governmental organisations.

18. Board decisions shall be taken by the majority vote and, when the votes are equal, the Chairman has a casting vote, with dissenting members having the right to have their views recorded in the minutes.

19. The minutes of every meeting of the Board shall be recorded in a register by the Executive Secretary and signed by the Chairman of the meeting and the Executive Secretary.

**Article 6: Secretariat of the Board**

20. The Board will be assisted by a Secretariat headed by an Executive Secretary. The Executive Secretary will be selected from the Ministry and will be appointed by the Board. The Executive Secretary will be assisted in this work by other staff from the Ministry as, and when, needed. In addition, the Executive Secretary may recruit local specialists and consultants to help the Board with its work.

Article 7: Functions of the Secretariat

21. The Secretariat will:

- (a) arrange the business for meetings of the Board;
- (b) follow up on matters decided by the Board and arrange for preparation of reports and other materials requested by the Board;
- (c) arrange site visits and public meetings as requested by the Board;
- (d) mobilize a publicity program to inform the public about the annual road program and its financing;
- (e) undertake regular surveys of road user attitudes towards the road program to identify its strengths and weaknesses and how support for the road program might be improved;
- (f) prepare an annual budget for the Board, monitor its implementation during the year and provide an end of year statement of accounts to the Board;
- (g) arrange to have the accounts of the Board audited by the Auditor General as part of the audit of the Ministry;
- (h) prepare an Annual Report in such form and with such content as may be prescribed by the Board;
- (i) provide any other support requested by the Board.

Article 8: Annual Performance Review

22. The Board will be subject to an annual performance review to establish how effectively it is delivering on its terms of reference (Article 4). During the course of the review, consideration will be given to any suggestions for further changes and modifications to Law 118/1996 to improve the financing of roads and the management of the Fund. The outcome of the annual performance review will be tabled before parliament for information.

23. No sooner than two years after the establishment of the Board, and no later than 5 years after its establishment, the Minister will decide whether to discontinue the Board, or to pass a comprehensive new Law to establish it on a more stable basis. Among other things, the new Law may choose to transform the Board into an Executive Board to manage the Fund on an executive basis.

Article 9: Power of the Minister in Relation to the Board

24. The Minister may, in addition to the above mentioned Terms of Reference, give to the Board general or specific directions in writing as to the performance of its functions and the Board shall give effect to such directions.