

Malawi

## Roads Fund Administration Act

### Chapter 69:08

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# Roads Fund Administration Act

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# Malawi

## Roads Fund Administration Act

### Chapter 69:08

Commenced on 1 December 2006

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

**An Act to establish a fund to be known as the Roads Fund to finance the maintenance and rehabilitation of public roads; to establish the Roads Fund Administration as the body responsible for the management of the Roads Fund; and for connected purposes**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Roads Fund Administration Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**Administration**" means the Roads Fund Administration established under [section 3](#);

"**Authority**" means the Roads Authority established by section 3 of the Roads Authority Act;

*[Cap. 69:07]*

"**appointed date**" means the date appointed by the Minister under [section 1](#);

"**Board**" means the Board referred to in [section 5](#);

"**Minister**" means the Minister responsible for finance;

"**public road**" has the same meaning ascribed to it in the Public Roads Act;

*[Cap. 69:02]*

"**road**" has the same meaning ascribed to it in the Public Roads Act;

*[Cap. 69:02]*

"**Roads Fund**" means the Roads Fund established under [section 18](#);

"**road agency**" has the meaning ascribed thereto under the Roads Authority Act.

*[Cap. 69:07]*

### Part II – Establishment of the Roads Fund Administration

#### 3. Establishment of the Administration

There is hereby established a body to be known as the Roads Fund Administration (in this Act otherwise referred to as the "Administration") 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 bodies corporate may by law do or perform.

#### 4. Purpose of the Administration

The purpose of the Administration shall be to raise, administer and account for funds for construction, maintenance and rehabilitation of public roads.

### Part III – Board of the Administration

#### 5. Composition of the Board

- (1) The operations of the Administration shall be managed and controlled by a Board which shall consist of—
  - (a) the following members to be appointed by the Minister—
    - (i) one member nominated by and representing the financial institutions in Malawi;
    - (ii) one member nominated by and representing the Malawi Confederation Chamber of Commerce and Industry;
    - (iii) one member nominated by and representing the National Local Government Finance Committee;
    - (iv) one member nominated by and representing the fuel pricing authority; and
    - (v) one member of the public representing the general interest of the public;
  - (b) the following members *ex officio*—
    - (i) the Secretary to the Treasury or his designated representative; and
    - (ii) Secretary for Economic Planning and Development or his designated representative.
- (2) The Board shall elect the Chairman and Vice-Chairman of the Board from amongst their number.
- (3) A member *ex officio* of the Board or any person employed in the public service shall not be eligible to be elected Chairman or Vice Chairman of the Board but shall have the right to vote on any matter at the meetings of the Board.
- (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 the membership thereof shall be published in the *Gazette*.
- (6) A member of the Board, other than a member *ex officio*, shall hold office for a period of three years from the date of his appointment and shall be eligible for re-appointment at the expiry of that period.

#### 6. Disclosure of interest

If a member of the Board acquires any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract, proposed contract

or other matter is the subject of consideration by the Board, he shall at the meeting, as soon as practicable after the commencement of the meeting, disclose the fact to the Board, and shall not take part in the consideration or discussion of or vote on any question with respect to, the contract or other matter.

## 7. Board may establish committees

- (1) For the better carrying into effect of the purposes for which the Administration and the Roads Fund are established, the Board may establish such number of committees as the Board shall deem appropriate to perform such functions and responsibilities as the Board shall determine subject to the directions of the Board.
- (2) The provisions of this Act relating to the meetings of the Board shall apply *mutatis mutandis* to the meetings of any committee.
- (3) The Board shall appoint the chairman of each committee from amongst the members of the Board.

## 8. Board may co-opt advisors

The Board may, in its discretion, at any time and for any length of period, co-opt 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. Vacation, etc., of members from office

- (1) The office of a member, other than a member *ex officio*, shall be vacated—
  - (a) upon the expiry of the period of his 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 is absent, without the permission of the Board, from three successive meetings of the Board of which he has had notice;
  - (g) upon the member giving notice in writing of his intention to resign his office;
  - (h) 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;
  - (i) upon the commission of the offence referred to in [section 28](#) (2);
  - (j) if a member is removed under [section 17](#) (4) (b); and
  - (k) if he ceases to be a representative of the organization that nominated him.
- (2) Whenever there is a vacancy in the office of a member of the Board, the Minister shall, by notice published in the *Gazette*, appoint—
  - (a) in the case of a member referred to in [section 5](#) (1) (a) (i) to (iv), another person, nominated by the authority or institution which nominated the original member, to fill the vacancy; and
  - (b) in the case of a member referred to in [section 5](#) (1) (a) (v), appoint another person to fill the vacancy.
- (3) Subject to [section 10](#) (3), the Board may act notwithstanding any vacancy in the membership of the Board.

## 10. Meetings of the Board

- (1) The Board shall meet at such place or places, and at such time or times as the Chairman may determine and shall meet at least once in every two months.
- (2) Ordinary meetings of the Board shall be convened by at least fourteen days written notice to the members by the Chairman, and the Chairman may, at his discretion, and shall at the written request of four or more members of the Board and within seven days of such request, cause an extraordinary meeting of the Board to be summoned at such place and time as he may appoint.
- (3) The Chairman, or in his absence, the Vice-Chairman shall preside at meetings of the Board, and the quorum at any meeting of the Board shall be four members of the Board.
- (4) In the absence of both the Chairman and Vice-Chairman, the members present and forming a quorum shall elect one of their number to preside over the meetings of the Board, and the member so elected shall exercise all the powers and perform all the duties of the Chairman.
- (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 any such standing orders.
- (6) Minutes of each meeting of the Board or a committee of the Board shall be kept by the secretary and shall be confirmed at the succeeding ordinary meeting.
- (7) At any meeting the decision of the Board on any matter shall be that of the majority of the members present and voting, and at all such meetings the person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberate vote.
- (8) The Board shall designate any person in the employ of the Administration to be the secretary to the Board or at the meetings of any of its committees.

## 11. Remuneration and expenses of members of the Board

Members of the Board shall be paid from the 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 connexion with the business of the Board or the committee.

## Part IV – Functions and powers of the Board

## 12. Functions of the Board

The functions of the Board shall be to—

- (a) administer and manage the Roads Fund;
- (b) prepare and publish audited annual accounts of the Roads Fund;
- (c) recommend to the Minister fuel levy and other road user charges and tariffs as required;
- (d) allocate financial resources—
  - (i) for the construction, maintenance and rehabilitation of roads based on a percentage of the approved annual work programmes of the Authority; and
  - (ii) for traffic and road safety management;
- (e) arrange for the collection of monies assigned to the Roads Fund;
- (f) identify other sources of funding;



- (g) co-ordinate and ensure total and timely accountability of the Roads Fund;
- (h) arrange for the collection of road user charges by agents assigned for the purpose;
- (i) prepare and publish procedures for the disbursements from the Roads Fund;
- (j) specify the requirements for certification of direct payment for works;
- (k) review the annual expenditure programmes of the Administration;
- (l) monitor through financial and technical audits the use of funds disbursed to the Authority for maintenance and rehabilitation of roads; and
- (m) do all such things as are necessary for achieving the purposes for which the Administration and the Roads Fund are established.

### 13. Powers of the Board

For the better performance of its functions, the Board shall, subject to the provision of this Act and any other written law, have power—

- (a) to raise money in the form of road user charges;
- (b) to publish, from time to time, such technical or other information as it deems necessary or expedient for the promotion of the funding of the construction, maintenance and rehabilitation of public roads; and
- (c) to enter into financing agreements with the Authority for the funding of approved road programmes.

### 14. Borrowing powers

Subject to the Public Finance Management 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.

*[Cap. 37:02]*

### 15. Board to be accountable to the Minister

- (1) The Board shall be responsible and accountable to the Minister for ensuring efficiency, transparency and propriety in—
  - (a) the allocation and utilization of public funds under this Act;
  - (b) the conduct of its business; and
  - (c) the operations and activities of the Administration.
- (2) The Board shall not disburse any money or authorize the payment of any money to any contractor engaged by the Authority to construct, maintain or rehabilitate any public road unless it has been certified in writing by the Authority that the work in respect of which the contractor is engaged to perform has been carried out to the required standard.

### 16. Board to report to the Minister

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

## 17. Inquiries by the Minister

- (1) If the Minister has reasonable cause to suspect that—
  - (a) the Board has failed to observe or perform any of the duties or obligations conferred or imposed upon it by this Act or any other written law;
  - (b) the Board has done or performed any act, matter or thing without due authority.he may, in his discretion, appoint a person or persons (hereinafter referred to as the "Board of Inquiry") to inquire into such matter.
- (2) The Board of Inquiry shall determine its own procedure but the Minister may, if he deems it fit, define the terms of reference for the Board of Inquiry.
- (3) If, upon an inquiry under this section, the Minister is satisfied that the Board has done or suffered any of the acts, matters or thing referred to in subsection (1), he may by order in writing, require the Board to remedy the same within such time as he may appoint.
- (4) If the Board fails to comply with an order of the Minister made under subsection (3), the Minister may, in addition to any other powers conferred on him by this Act—
  - (a) suspend the exercise by the Board of any of the powers conferred upon it by this Act or any other written law for such period as he may think fit;
  - (b) remove from office all or any of the members and, in his discretion, appoint new members pursuant to [section 5](#),and during such period, or as the case may be, pending the appointment of new members, confer upon any person the exercise of any powers so suspended or of the members.
- (5) The expenses incidental to—
  - (a) any inquiry under this section; and
  - (b) the exercise of any of the powers of the Board under subsection (4),shall be paid by such person as the Minister may direct, and if the Minister directs payment by the Board, such expenses shall be charged upon the annual revenue of the Administration.

## Part V – Establishment of the Roads Fund

### 18. Establishment of the Roads Fund

- (1) There is hereby established a Fund to be known as the Roads Fund which shall consist of—
  - (a) such moneys as may be appropriated by Parliament for the purposes of the Roads Fund;
  - (b) all Roads Fund fuel levy collected, less the cost of collection;
  - (c) such percentage of international transit fees payable under the Road Traffic Act, as the Minister may determine;  
*[Cap. 69:01]*
  - (d) such percentage of road user levies including tariffs, taxes and tolls as may be determined by the Minister on the recommendation of the Board; and
  - (e) such monies as may be paid to the Roads Fund by way of loans, grants or donations.

## 19. Purpose of the Roads Fund

The purpose of the Roads Fund shall be—

- (a) to finance—
  - (i) the maintenance and rehabilitation of public roads and surveys and monitoring related to such maintenance and rehabilitation of public roads;
  - (ii) on a cost sharing basis, routine and periodic maintenance of roads, tracks and trails under the responsibility of a City, Town, Municipal or District Council, as the case may be, for the purposes of this Act; and
  - (iii) emergency works on public roads a provision for which shall be made in the annual budget of the Administration.
- (b) to administer any monetary contribution which shall be made by the Government for the implementation and execution of a donor-funded project for the construction, maintenance and rehabilitation of any public road.

## 20. Advances to the Roads Fund

- (1) The Board shall ensure that in any financial year, expenditures and commitments from the Roads Fund shall not exceed the annual income of the Roads Fund.
- (2) If, in exceptional circumstances, the income of the Roads 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 may make advances to the Roads 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 any such advance shall be repaid from the income of the Roads Fund in the next financial year.

## Part VI – Financial provisions

## 21. Funds of the Administration

- (1) The funds of the Administration shall consist of such moneys as may—
  - (a) be appropriated to the Administration by the National Assembly for the purposes of the Administration;
  - (b) with the approval of the Minister, be allocated to the Administration from the Roads Fund;
  - (c) be paid to the Administration by way of loans, grants or donations; and
  - (d) vest in or accrue to the Administration.
- (2) The Administration may—
  - (a) accept moneys by way of grants or donations from any source in Malawi and, subject to the approval of the Minister, from any source outside Malawi; and
  - (b) subject to the approval of the Minister, raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions.
- (3) There shall be paid from the funds of the Administration—
  - (a) salaries, allowances, loans, gratuities and pensions of staff of the Administration and other payments for the recruitment and retention of staff;

- (b) such reasonable traveling and subsistence allowances for members of the Board and members of any committee of the Administration when engaged in the business of the Administration and at such rates as the Administration may with the approval of the Minister, determine;
  - (c) any other expenses incurred by the Administration in the performance of its functions; and
  - (d) administrative expenses associated with the execution of the duties and responsibilities of the Authority.
- (4) The Administration shall at all times comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement Act.

*[Cap. 37:01]*

*[Cap. 37:02]*

*[Cap. 37:03]*

## **22. Holdings of the Roads Fund**

- (1) All sums received for the purposes of the Administration and the Roads Fund shall be paid into one or more banking accounts at such bank or banks as the Board may determine, and no amount shall be withdrawn 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 Roads Fund not immediately required for the purposes of the Administration may be invested in such manner as the Board may, in its discretion, determine.

## **23. Financial year**

The Financial Year of the Administration and the Roads Fund shall be the period of twelve months commencing on the 1st July of each year and ending on the 30th June of the following year:

Provided that the first financial year may be a period shorter or longer than twelve months as the Board shall determine, but in any case not longer than eighteen months.

## **24. Charges on the Roads Fund**

The charges on the Roads Fund shall be for—

- (a) maintenance and rehabilitation of public roads; and selected road safety projects; and
- (b) such other relevant matters as may be determined by the Board.

## **25. Annual Road Programme and Annual Expenditure Programme**

- (1) The Authority shall annually submit, at least three months before the end of each financial year, for allocation of funding by the Board, the approved Annual Road Programme and the Annual Expenditure Programme in respect of the next financial year.
- (2) The Annual Road Programme shall be in such form and contain such particulars as the Board shall determine but shall include—
  - (a) the relevant Annual Expenditure Programme of the road agencies for the next financial year;
  - (b) grounds for the expenditure in respect of each public road programme; and
  - (c) the revenue projections for the financial year of the road agencies for the Roads Fund.

- (3) Allocation from the Roads Fund to the road agencies shall be based among others on the conditions of the road network maintenance requirements, the length of the road network, traffic, national development priorities and social priorities.
- (4) The Board shall prepare the total Annual Expenditure Programme to be financed from the Roads Fund in consultation with the Minister and shall consider—
  - (a) the affordability of the overall programme; and
  - (b) the appropriateness of the amount allocated for each class of road.
- (5) The Board shall submit a report of the prepared total Annual Expenditure Programme to the Minister responsible for public roads, transport and public works.

## **26. Disbursements of the Roads Fund**

- (1) Money from the Roads Fund shall only be disbursed for works, goods and services that form part of the approved Annual Expenditure Programme.
- (2) The disbursements of money from the Roads Fund shall be in accordance with financing agreements entered into between the Administration and the Authority.

## **Part VII – Management**

### **27. Appointment of staff of the Administration**

- (1) The Board shall appoint a General Manager who shall be the chief executive officer of the Administration upon such terms and conditions as the Board shall, subject to approval by the Minister, determine.
- (2) The General Manager shall be responsible to the Board for the general performance of the functions and the exercise of the powers of the Administration and shall appoint such other professional technical and administrative officers as the Board may deem necessary, subject to such terms and conditions as the Board shall determine.
- (3) The Administration shall pay to every person in its employ such remuneration and allowances and grant to every such person such fringe benefits as it may deem appropriate.
- (4) The Administration may provide for persons in its employ or their dependants, by means of insurance with an insurance company or a pension or provident fund or in any other manner whatsoever, pecuniary benefits upon retirement, death or termination of service or in the event of illness or injury.

## **Part VIII – Offences and penalties**

### **28. Offences and penalties**

- (1) Any person who appropriates or applies or causes any other person to appropriate or apply, any proceeds or assets of the Administration or the Roads Fund otherwise than in accordance with this Act shall be guilty of an offence and shall, upon conviction, be liable to a fine of K500,000 and to imprisonment for two years.
- (2) Any person who contravenes [section 6](#) shall be guilty of an offence and shall, upon conviction, be liable to a fine not exceeding the value or price of the proposed contract or other matter in respect of which he fails to disclose his interest, and to imprisonment for twelve months but the fact of a person having so voted shall not invalidate any resolution or proceeding of the Board.
- (3) Any person who contravenes [section 22](#) (1) shall be guilty of an offence and shall, upon conviction, be liable to a fine of K2,000,000 and to imprisonment for five years.

- (4) It shall not be a defence to an offence under this Act that the proceeds of the Roads Fund have been appropriated or applied for the benefit of the public.

## Part IX – Miscellaneous

### 29. Inconsistency with other written laws

Where any provision of any written law relating to public roads, road traffic or road safety is inconsistent with any provision of this Act, the provision of that written law shall be invalid to the extent of such inconsistency.

### 30. Regulations

- (1) The Minister may, after consultations with the Board, by notice published in the *Gazette*, make regulations for the better carrying into effect of this Act.
- (2) Without prejudice to the generality of subsection (1), such regulations may provide for—
- (a) any matter which under this Act is required or permitted to be prescribed;
  - (b) the principles to be applied by the Administration in the calculation and imposition of road user charges;
  - (c) the collection of road user charges;
  - (d) the manner in which the Administration may perform any function under this Act;
  - (e) the management and control of the Roads Fund;
  - (f) the procedures to be followed in connexion with the lodging of complaints against the Administration; and
  - (g) any other matter which the Minister considers necessary to give effect to the provisions of this Act.

## Part X – Transitional provisions

### 31. Discharge of liabilities and obligations of the National Roads Authority

On or after the appointed date, the Administration shall allocate adequate funds to the Authority to enable the Authority discharge any liabilities or obligations of the National Roads Authority which are deemed transferred to the Authority.

### 32. Terms of service of employees of the National Roads Authority

- (1) On or after the appointed date, the Administration shall, on such terms and conditions as it may determine, with the approval of the Minister, appoint as staff of the Administration such employees from the National Roads Authority as may be necessary for the performance of the functions of the Administration.
- (2) Where an employee of the National Roads Authority is appointed to the service of the Administration, his contract of employment or service in the National Roads Authority shall be deemed to have automatically transferred to the Administration under no less favourable terms and conditions than those the employee enjoyed in the National Roads Authority.

### 33. Savings

- (1) Anything done in accordance with the National Roads Authority Act repealed by the Roads Authority Act, prior to the commencement of this Act and which may be done in accordance with the provisions of this Act, shall be deemed to have been done in accordance with this Act.
- (2) Any subsidiary legislation made or deemed to have been made under the National Roads Authority Act, repealed by the Roads Authority Act, in force immediately before the commencement of this Act—

*[Cap. 69:07]*

- (a) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this Act;
  - (b) may be replaced, amended or repealed by subsidiary legislation made under this Act.
- (3) All contracts awarded by the National Roads Authority in accordance with National Roads Authority Act repealed by the Roads Authority Act, prior to the commencement of this Act, shall be deemed to be contracts awarded by the Authority in accordance with this Act.

*[Cap. 69:07]*