



# LESOTHO Government Gazette

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## CONTENTS

No.

Page

### LEGAL NOTICES

- |     |  |      |
|-----|--|------|
| 102 | Appointment of Members of Local Government . . . . . | 1218 |
|     | Service Tribunal Notice, 2012                        |      |
| 103 | Finance (Road Fund) Regulations, 2012 . . . . .      | 1219 |

### OTHER NOTICES

(See Supplement of the Gazette)

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## LEGAL NOTICE NO. 103 OF 2012

**Finance (Road Fund) Regulations, 2012**

In exercise of the powers conferred on me by section 21(3) of the Public Financial Management and Accountability Act 2011<sup>1</sup>, I,

**LEKETEKETE VICTOR KETSO**

Minister responsible for finance, make the following regulations:

**PART I – PRELIMINARY****Citation and commencement**

1. These regulations may be cited as the Finance (Road Fund) Regulations, 2012 and shall come into operation on the date of their publication in the Gazette.

**Interpretation**

2. In these regulations, unless the context otherwise requires -

“appointed member” means a member of the Board appointed by the Minister under regulation 8;

“Board” means the Board of Directors of the Fund, established under regulation 8;

“Chief Executive Officer” means the Chief Executive Officer of the Road Fund Secretariat and the Secretary of the Road Fund Board appointed under regulation 14;

“Fund” means the Road Fund, established by the Finance (Roads Fund) Legal Notice 1995<sup>2</sup>;

“financial year” means the period beginning from 1st April and ending 31st March of the following year;

“Minister” means the minister responsible for finance; and

“Secretariat” means the Secretariat of the Fund established under regulation 15.

## PART II – THE FUND

### Purpose of the Fund

3. (1) The purpose of the Fund is to finance the following, in this order of priority:

- (a) routine, emergency and periodic maintenance of all roads in Lesotho;
- (b) urban and rural community roads, on a cost share basis;
- (c) road rehabilitation, road upgrading, new road works and road safety projects; and
- (d) any other project or matter connected with roads.

(2) The road works programmes and road safety activities shall be identified and prioritised by the agencies responsible for construction and maintenance of roads and for road safety activities respectively.

### Receipts into the Fund

4. (1) There shall be paid into the Fund:

- (a) road toll-gate fees;
- (b) all cross border fees and levies;
- (c) registration, license and clearance fees on motor vehicles;
- (d) short-term permits and special permits for motor vehicles;

- (e) road maintenance levy on petrol and diesel;
- (f) fines on overloaded goods vehicles;
- (g) fines for road traffic offences;
- (h) interest earned on deposited funds;
- (i) cost share paid into the Fund by Community Councils for works on urban and rural community roads;
- (j) any other road user charges; and
- (k) any sums appropriated to the Fund, including donor funding.

(2) The Board shall take such steps as are necessary to ensure that moneys payable to the Fund are collected and deposited into the Fund's bank accounts.

### **Disbursements from the Fund**

5. Moneys shall be paid from the Fund for the following purposes -

- (a) financing routine, emergency and periodic maintenance of roads;
- (b) administrative costs of the Fund; and
- (c) financing road rehabilitation, road upgrading, new road works and road safety projects;
- (d) any other project or matter connected with roads.

**PART III – MANAGEMENT AND ADMINISTRATION  
OF THE FUND**

**Management and Administration of the Fund**

6. (1) The Fund shall be managed by the Board, which shall report to the Minister.

(2) The Fund shall be administered by the Secretariat, which shall report to the Board.

**Functions of the Minister**

7. (1) The Minister shall appoint the Board and shall cause the names of the Board Members to be published in the Gazette.

(2) The Minister shall -

(a) review and approve adjustments to all sources of revenue as set out under regulation 4; and

(b) approve and facilitate appropriations from the Consolidated Fund on the advice of the Board.

**Continuation and composition of the Board**

8. (1) There shall continue in existence a Board of Directors of the Fund comprising -

(a) the Chief Executive Officer;

(b) three ex-officio members, as set out in Schedule 1, who shall not be officers holding offices below the level of Director or equivalent; and

(c) seven non-governmental members as set out in Schedule 2.

(2) The Chairperson of the Board and the Deputy Chairperson

shall be appointed by the Minister from amongst the members of the Board.

(3) Other members of the Board shall be appointed by the Minister pursuant to their nomination by the respective stakeholders listed under Schedules 1 and 2.

### **Tenure and vacation of office**

9. (1) An appointed member -
- (a) shall hold office for a period of three years from the date of appointment unless the officer resigns or vacates office under subregulation (3); and
  - (b) may be re-appointed at the conclusion of his term of office.
- (2) An appointed member may resign by writing to the Minister.
- (3) An appointed member shall vacate office if -
- (a) he has been absent from three consecutive regular meetings of the Board without reasonable excuse communicated to the Chairperson;
  - (b) he is in contravention of the code of conduct referred to in regulation 21;
  - (c) he is unable, unfit or not competent to discharge the functions as a member of the Board;
  - (d) he fails to comply with subregulation 12(1);
  - (e) he ceases to occupy the position that qualified him for membership;
  - (f) he has been convicted of an offence involving fraud or dishonesty; and

- (g) he has been declared insolvent or bankrupt under any law in Lesotho.

(4) Where an appointed member has resigned under subregulation (2) or has vacated his office or has been terminated from office, the Minister shall fill that vacancy with a new appointment in accordance with regulation 8, and the person so appointed shall hold office for the unexpired term of his predecessor.

### **Functions of the Board**

10. (1) The functions of the Board are to -
- (a) approve policies and procedures for the proper management and administration of the Fund;
  - (b) approve procedures to be followed in the preparation and submission of costed Annual Roads Programmes by the various implementing agencies;
  - (c) review and approve allocation of funds for the Annual Roads Programmes and road safety related activities at least six months before the national budget is approved;
  - (d) approve, annually, allocated resources of the Fund to the Secretariat according to the approved budget, and to various implementing agencies in accordance with the approved annual Roads Programmes;
  - (e) recommend to the Minister any changes in the level of the sources of revenue of the Fund, as set out under regulation 4;
  - (f) approve policies and establish procedures for disbursing funds for the Annual Roads Programmes;
  - (g) ensure transparency and accountability in the disbursement of funds;

- 
- (h) submit the approved Annual Roads Programmes to the Minister; and
  - (i) prepare and publish annual reports.

(2) The Board may form study groups or committees, as may be necessary for the proper discharge of the functions of the Board, consisting of some members of the Board and other persons with appropriate qualifications and define the objectives of the groups or committees.

(3) The Board may appoint consultants to carry out studies and other assignments to enable it to make informed decisions.

### **Meetings of the Board**

11. (1) The Board shall meet at least once every three months for regular Board meetings.

(2) The Chairperson shall -

- (a) at the written request of not less than five members of the Board, convene a special or an extraordinary meeting; and
- (b) notify Members of the meeting at least three days prior to the date of the meeting.

(3) The Chairperson shall preside at a meeting of the Board and if the Chairperson is absent, the Deputy Chairperson shall chair the meeting.

(4) The quorum at a meeting of the Board shall be six members.

(5) Decisions of the Board shall be taken by a majority vote, and where there is an equality of votes the Chairperson has a casting vote, with dissenting members having the right to have their views recorded in the minutes.

(6) The minutes of meetings of the Board shall be recorded in a register by the Secretary.



(7) The minutes shall be signed by the Secretary as well as the Chairperson of the meeting on behalf of the Board.

(8) The Board may co-opt other persons to advise the Board during deliberations at any of its meetings, but such persons shall not vote.

(9) Subject to this regulation, the Board shall formulate and regulate its own procedures.

### **Disclosure of interest**

12. (1) If a member of the Board acquires any direct or indirect pecuniary interest in a proposed or ongoing contract or in any other matter in which his private interests conflict with his duties as a member he shall, as soon as he becomes aware of the potential conflict of interest, disclose such facts to the Board and shall recuse himself when the issue is discussed by the Board.

(2) Failure to comply with subregulation (1) and intentional non-disclosure by a member of the Board shall constitute a contravention of the Code of Conduct, and shall result in termination of membership as prescribed under regulation 9(3)(b).

### **Remunerations and reimbursement of expenses**

13. (1) A member of the Board shall be remunerated for attendance of Board meetings at a rate to be determined by the Board and approved by the Minister.

(2) A member of the Board and a non-voting person co-opted or appointed to a sub-committee under regulations 10(2) and 11(7) shall -

- (a) be paid such honorarium as may be determined by the Board and approved by the Minister; and
- (b) be reimbursed expenses incurred in carrying out their duties under these regulations.

### **The Chief Executive Officer**

14. (1) The Minister shall, on the advice of the Board and following a competitive and transparent selection process by the Board, appoint a person to be the Chief Executive Officer of the Secretariat.

(2) The Chief Executive Officer shall be appointed on a contract basis.

(3) The Chief Executive Officer shall be the Chief Accounting Officer of the Fund and Secretary of the Board.

(4) The Chief Executive Officer shall perform such duties as are conferred on him under these regulations or by the Board.

(5) The Chief Executive Officer may assign a senior member of the Secretariat staff to take minutes of the Board meetings.

### **The Secretariat**

15. (1) There shall be a Secretariat of the Fund which shall be headed by the Chief Executive Officer, who shall be assisted by persons qualified in the human resources management, general administration, accounting and financial management, auditing and engineering disciplines.

(2) The staff of the Secretariat shall be appointed in accordance with Secretariat policies and procedures approved by the Board.

### **Secretariat employee benefits**

16. (1) The Fund may grant pensions, gratuities or retiring benefits and such allowances and benefits as may be approved by the Board to employees of the Secretariat and may require them to contribute to a pension fund, provident fund, superannuation scheme or similar scheme approved by the Board.

(2) If an officer holding a pensionable office in the public service is seconded to the Secretariat, the period during which he serves with the Secretariat shall, for the purpose of computation of time and amount of pen-

sion payable to him in respect of his service as a public officer, be deemed to be continuation of his service in the pensionable office.

### **Functions of the Secretariat**

17. (1) The Secretariat shall be responsible for the administration of the Fund in accordance with the decisions of the Board.

(2) Without prejudice to the generality of subregulation (1), the Secretariat shall -

- (a) keep proper books of account and related records in respect of the Fund;
- (b) maintain bank accounts in which shall be recorded all receipts into the Fund and all disbursements from the Fund;
- (c) prepare and submit for audit in respect of each financial year a balance sheet, statement of income and expenditure, and statement of cash flow in accordance with generally accepted accounting standards and practices;
- (d) prepare and publish an annual report in such form and content to be prescribed by the Board;
- (e) arrange the agenda for meetings of the Board;
- (f) implement and update the Procurement Guidelines and Reporting Formats of the Fund;
- (g) implement and update the Fund allocation criteria for apportioning and disbursing funds amongst the various implementing agencies;
- (h) review tender documents for consultants and contractors, and ensure compliance with relevant procurement guidelines of the Fund and those applicable in Lesotho;

- (i) monitor contract works for compliance with design standards, specifications and conditions of contract;
- (j) check and process payments;
- (k) scrutinise progress reports submitted by implementing agencies for compliance with Road Fund Reporting Formats and for the correctness of the information provided;
- (l) provide the Board with such information as may be required;
- (m) undertake road safety audits of road works; and
- (n) carry out any other functions assigned to it by the Board.

(3) The Secretariat shall, at least three months before the expiry date of the tenure of office of the Board members, advise the Minister of such expiration and the Minister shall advise respective stakeholders represented in the Board to nominate members for the following term of office.

#### PART IV – MISCELLANEOUS

##### **Annual Roads Programmes**

18. (1) Implementing agencies responsible for projects funded by the Fund shall, in consultation with the Secretariat, prepare Annual Roads Programmes, which shall be in such form and containing such details as may be prescribed by the Board.

(2) Implementing agencies obtaining funds from the Road Fund for purposes of regulation 3(1) shall submit performance progress reports at the frequency to be determined by the Fund.

(3) Implementing agencies shall enter into an annual performance agreement which shall form the basis of their performance evaluation in relation to annual programmes funded by the Fund.

**Annual report and accounts**

19. (1) The Board shall, within a period of six months after the end of the financial year, submit to the Minister an annual report on the activities of the Fund during the preceding financial year, which shall include audited financial statements for the preceding financial year.

(2) The annual report referred to in subregulation (1) shall include assessment relating to the achievement of the objectives of the Fund, compliance with the policies, procedures and criteria established by the Board, and the effectiveness of the administration of the Fund.

(3) The Minister shall submit a copy of the annual report of the Fund to Cabinet at the earliest opportunity.

**Audit of accounts**

20. (1) The financial statements and underlying accounts of the Fund shall be audited by the Auditor General or any officer authorised by him under the Audit Act of 1973.

(2) The financial statements shall be submitted to the Auditor General within three months of the end of the financial year.

(3) The Auditor General shall complete his audit of the financial statements and underlying accounts of the Fund for the previous financial year within three months of submission of the financial statements.

**Code of Conduct**

21. (1) The Minister shall issue a code of conduct for the Board.

(2) The Board shall issue a code of conduct for the Secretariat.

**Taxation**

22. The Fund may, subject to the laws governing taxes, apply for exemption from taxation in respect of certain transactions.

**Repeal**

23. The Finance (Road Fund) Regulations 2005<sup>3</sup> are repealed.

—  
**DR. LEKETEKETE VICTOR KETSO**  
**MINISTER OF FINANCE**

**NOTES**

1. Act No. 12 of 2011
2. Legal Notice No. 179 of 1995
3. Legal Notice No.72 of 2005

## SCHEDULE 1

**Ex-officio members of the Board (Regulation 8(1)(b))**

1. One representative of the ministry responsible for finance;
2. One representative of the ministry responsible for construction and maintenance of roads; and
3. One representative of the ministry responsible for energy.

## SCHEDULE 2

**Non-government Members of the Board (Regulation 8(1)(c))**

1. One person selected from passenger transport sector;
2. One person selected from freight transport sector;
3. One person selected from the engineering discipline;
4. One person selected from the Law Society of Lesotho;
5. One person selected from a consumer organisation; and
6. Two other people appointed by the Minister because of their special skills.