

THE TOLLS BILL, 2011

MEMORANDUM

The objects of this Bill are to—

- (a) establish and provide for the operation of toll roads;
- (b) provide for the charging and collection of tolls;
- (c) provide for private sector participation in the tolling of roads;
- (d) repeal and replace the Tolls Act, 1983; and
- (f) provide for matters connected with, or incidental to, the foregoing.

A. J. SHONGA. SC,
Attorney-General

N.A.B 1 of 2011

11th February, 2011

THE TOLLS BILL, 2011

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A BILL

ENTITLED

An Act to establish and provide for the operation of toll roads; provide for the charging and collection of tolls; provide for private sector participation in the tolling of roads; repeal and replace the Tolls Act, 1983; and provide for matters connected with, or incidental to, the foregoing.

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Tolls Act, 2011. Short title
- 5 2. In this Act, unless the context otherwise requires— Interpretation
- “Agency” means the Road Development Agency established under the Public Roads Act, 2002; Act. No. 12 of 2002
- 10 “concessionaire” means a person authorised by the Minister to manage a toll road under a concession agreement pursuant to section *fourteen*, and includes a successor, delegate, transferee or assignee of the concessionaire;
- “concession agreement” means an agreement made pursuant to section *fourteen*;
- 15 “development” means the upgrading of a road to a new standard, including the construction of a new road or bridge or widening or rehabilitation of a road;
- “Director” means the person appointed Director under section *six* of the Public Roads Act, 2002;
- 20 “inspector” means a person appointed as such under section *five*;

N.A.B. 1, 2011

	“maintenance” in relation to a road, means all works to preserve road quality, road shape, drain, culverts, structures and bridges, spot improvement of bad spots to maintain accessibility, re-sealing, re-shaping and re-gravelling;	
Act No. 12 of 2002	“road” has the meaning assigned to it in the Public Roads Act, 2002;	5
Act No. 13 of 2002	“Road Fund” means the National Road Fund established under section <i>sixteen</i> of the National Road Fund Act, 2002;	
	“toll” means a fee paid or payable on any road, border post, bridge, pontoon or other place, where the Agency or a concessionaire operates a toll point;	10
	“toll collector” means a person appointed as such under section <i>six</i> ;	
	“toll road” means a road on which a toll is payable under this Act; and	15
	“vehicle” means a vessel drawn, propelled or driven by any kind of power generated by an automated engine, and capable of being used as a means of transportation on land, but does not include a wagon, dray, cart, carriage or bicycle.	

PART II 20

ADMINISTRATION

Designation of toll authority	3. The Agency shall, subject to the direction of the Minister, be responsible for the administration and implementation of the provisions of this Act.	
Functions of Agency	4. The functions of the Agency are to—	25
	(a) regulate the operation and maintenance of toll roads;	
	(b) monitor compliance of concessionaires with the terms and conditions of concession agreements;	
	(c) advise the Minister on the design, construction, safety, regulation, operation and maintenance of toll roads; and	30
	(d) perform such other function as may be conferred by, or under, this Act or anyother law.	
Inspectorate unit	5. (1) The Agency may, in order to ensure compliance with the provisions of this Act, establish, under the general supervision of the Director, an inspectorate unit.	35

(2) The Agency may appoint any suitable person to be an inspector on such terms and conditions as the Agency may determine.

5 (3) The Agency shall provide an inspector with a certificate of appointment, in the prescribed form, which shall be *prima facie* evidence of the inspector's appointment as such.

(4) An inspector shall, in performing any function under this Act

10 (a) be in possession of the certificate of appointment referred to in subsection(3); and

(b) show the certificate of appointment to any person who requests to see it or is subject to an investigation under this Act.

(5) An inspector may, with a warrant, at any reasonable time—

15 (a) enter and search any toll facility or vehicle that the inspector has reasonable grounds to believe is being used for the commission of an offence or contrary to the provisions of this Act;

20 (b) search any person in the toll facility or vehicle if there are reasonable grounds for believing that the person has possession of any document or article that has a bearing on the investigation:

Provided that a person shall only be searched by a person of the same sex;

25 (c) examine any document or article found within the toll facility or vehicle that has a bearing on the investigation;

(d) require information to be given about any document or article by

30 (i) the owner of the toll facility or vehicle;

(ii) the person in control of the toll facility or vehicle;

(iii) any person who has control of the document or article; or

(iv) any other person who may have the information;

35 (e) take extracts from, or make copies of, any book or document found in the toll facility or vehicle that has a bearing on the investigation;

- (f) use any computer system in the toll facility or require the assistance of any person in the toll facility to use that computer system to—
- (i) search any data contained in, or available to, the computer system; 5
 - (ii) reproduce any record from the data; or
 - (iii) seize any output from the computer for examination and copying; and
- (g) attach and, if necessary, remove from the toll facility or vehicle for examination and safeguarding any document or article that has a bearing on the investigation. 10
- (6) An inspector may seize any vehicle used for the commission of an offence under this Act.
- (7) An inspector who removes any document or article from a toll facility or vehicle under paragraph (g) of subsection (5) shall 15
- (a) issue a receipt for the document or article to the owner of, or person in control of, the toll facility or vehicle; and
 - (b) return the document or article, as soon as practicable, after achieving the purpose for which it was removed.
- (8) A person who— 20
- (a) delays or obstructs an inspector in the performance of the inspector's functions;
 - (b) refuses to give an inspector such reasonable assistance as the inspector may require for the purpose of exercising the inspector's powers; 25
 - (c) impersonates an inspector; or
 - (d) gives an inspector false or misleading information in answer to an inquiry made by the inspector;
- commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment 30 for a period not exceeding two years, or to both.
- (9) An inspector shall furnish the Agency with a written report and any other information relating to an inspection as the Agency may require.
- (10) Nothing in this section requires a person to disclose or 35 produce information or a document if the person would in an action in a court be entitled to refuse to disclose or produce the information or document.

6. (1) The Agency may, on such terms and conditions as it may determine, appoint any suitable person as a toll collector for purposes of this Act and to perform such other functions as the Agency may specify. Toll collectors

5 (2) A toll collector shall remit to the Agency any toll collected in such manner as the Minister may prescribe.

PART III

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TOLLS

7. There is hereby imposed a road toll.

Imposition of
toll

15 8. The Agency may, on any road, border post, bridge, pontoon or other place— Toll points

(a) operate toll points; and

(b) erect and maintain such structures necessary for operating toll points.

20 9. (1) A driver of a vehicle passing through a toll point shall, at the time of passing through the toll point, pay the toll in respect of that vehicle to the toll collector. Payment of toll

(2) A person who contravenes subsection (1), commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

25 10. (1) The Minister may, by statutory instrument, on such conditions as the Minister may determine, exempt any vehicle or class of vehicles from the payment of the toll. Exemptions

30 (2) Without prejudice to subsection (1), an exemption made under that subsection may be general or restricted to particular toll points or hours.

(3) Free passage on toll roads shall be granted to the following:

35 (a) authorised emergency vehicles, including fire department and police vehicles, public or private ambulances, emergency response vehicles and vehicles carrying blood or tissue banks;

(b) military vehicles;

40 (c) contractors working on the construction, improvement, maintenance or development of a road; and

(d) the President's and the Vice-President's motorcade.

(4) Subsection (3), does not apply to temporary free passage, not exceeding twentyfour hours, that is provided for operational safety or emergency reasons determined by the Director.

Use of toll fees	11. The toll fee or other charge imposed for the use of a toll road and collected by the Agency shall form part of the Road Fund and shall be used exclusively for the construction, maintenance and rehabilitation of roads.	5
Suit for recovery	12. Any toll payable under this Act shall be a debt due to the Government and may be recovered as a civil debt by the Government.	10
Register	13. A toll collector shall keep and maintain a register of all vehicles paying the toll at the toll point and shall submit to the Agency such periodic returns of the payment of the tolls in the prescribed form.	15

PART IV

CONSESSION AGREEMENTS

Concession agreement Act No. 14 of 2009	14. (1) The Minister may, in consultation with the Minister responsible for finance and in accordance with the Public-Private Partnership Act, 2009, authorise any person to operate and maintain any toll road under a concession agreement. (2) The Minister may, in consultation with the Minister responsible for finance, by statutory instrument, prescribe the contents of concession agreements.	20
Exercise of toll road function by concessionaire	15. (1) A concessionaire shall exercise such functions in relation to a toll road as shall be specified in the concession agreement. (2) Subject to this Act and the concession agreement, a concessionaire shall collect and retain the toll levied and collected pursuant to the concession agreement.	25 30
Exercise of toll road function by Agency	16. (1) A toll road function exercisable by a concessionaire may, with the approval of the Minister, be exercised by the Agency in accordance with the concession agreement— (a) in an emergency, as if it were not a toll road; (b) if it appears to the Agency that—	35

(i) its exercise is necessary or expedient in the interests of road safety; or

(ii) the concessionaire has failed or is unable to effectively discharge the function in any respect;

5 and the Agency shall not be liable for anything done or omitted by the concessionaire in the exercise or purported exercise of the toll road function.

(2) The Agency may recover from the concessionaire the costs incurred by it in exercising a toll road function in the circumstances
10 specified in subsection (1), including any other relevant administrative expenses.

17. (1) A concessionaire may, in relation to the exercise of a toll road function, enter into arrangements with a specified organisation for the provision of any prescribed utility service on a
15 toll road.

Utility
contracts

(2) The Minister may, where a concessionaire fails to agree with a specified organisation on any issue concerning the provision of a prescribed utility service, on the request of either party, intervene in the public interest and, after hearing the parties, make
20 a determination on the matter.

(3) A determination by the Minister under subsection (2) shall be binding on the parties.

18. A concessionaire shall—

Duty to
maintain
toll road

25 (a) maintain the toll road to which the concession agreement relates in good repair and condition and in accordance with sound engineering and operating practices; and

30 (b) comply with such design, construction, operating, maintenance and safety standards as may, after consultation with the Agency, be prescribed by the Minister.

19. (1) Subject to subsection (3), a concessionaire may close part of a toll road to traffic in order to do work on the toll road for such time as is necessary to do the work but in all cases the concessionaire shall keep the toll road open to traffic travelling in
35 both directions at all times.

Closure of
toll road

(2) A concessionaire—

(a) may close a toll road on the occurrence of any incident on the toll road that endangers the life, health or safety of persons using the toll road; and

(b) shall, as soon as practicable after the closure, pursuant to paragraph (a), notify the Director of the closure of the toll road. 5

(3) A concessionaire shall, where the concessionaire intends to close the whole or part of a toll road for more than seventy-two hours— 10

(a) give to the Director at least thirty days written notice or such shorter period as may be agreed with the Director; and

(b) not commence the closure without the approval of the Director. 15

(4) A concessionaire shall not close a toll road under subsection (3) unless the concessionaire provides an alternative route accessible to the public in the area in which the toll road is closed.

(5) A person who uses any part of a toll road which is closed to traffic in accordance with this section does so at that person's own risk and the concessionaire shall not be liable for any injury, loss or damage sustained by that person. 20

(6) Where a concessionaire closes a toll road or part thereof under this section, the concessionaire shall notify the public of such closure by— 25

(a) placing signs in a conspicuous position on the toll road; and

(b) the publication of a notice in a daily newspaper of general circulation in Zambia.

Power of
concessionaire
to
assign or
delegate

20. (1) A concessionaire may, subject to such terms and conditions as the Minister may, in writing, approve, assign or delegate all or part of the concessionaire's rights and obligations under the concession agreement. 30

(2) A concessionaire may, where the concessionaire delegates the concessionaire's rights and obligations under subsection (1), with the approval of the Minister, in writing, revoke the delegation. 35

(3) The delegation of rights and obligations under this section does not preclude the performance of the rights by the concessionaire.

21. (1) A concession agreement may provide, on termination of the agreement, for the transfer to the Agency of such property, rights and liabilities of the concessionaire as may be approved by the Minister.

5 (2) Where a concession agreement terminates or is terminated before the end of the toll period, until appropriate arrangements as specified in the concession agreement are made by the concessionaire, the Agency—

Transfer on
termination
of
concession
agreement

10 (a) shall take reasonable steps to secure the appointment of a new concessionaire; and

(b) may collect and retain tolls in the same manner as the concessionaire, for a period of not more than two years, until a new concessionaire is appointed or the toll period ends.

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PART V

GENERAL PROVISIONS

22. A person who—

(a) fraudulently or forcibly drives a vehicle through a toll point or without paying the toll; and

20 (b) having collected any toll, fails or refuses to remit the toll to the Agency;

(c) uses any counterfeit receipt to avoid the payment of any toll or otherwise attempts to evade the payment of a toll;

General
offences and
penalties

25 (d) fails, neglects or refuses to obey an instruction or direction of the Agency, a concessionaire or a person authorised by the Agency or concessionaire;

(e) deposits glasses, garbage or any other offensive matter on a toll road;

30 (f) defaces or removes any barricade, light, detour sign or notice relating to the closure of a toll road;

(g) uses any part of a toll road which is closed to traffic;

(h) willfully or negligently causes damage to any toll road; and

35 (i) removes or destroys any barrier placed on a toll road;

commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

Summary
imposition
of
penalties

23. (1) An inspector or a toll collector may, where satisfied that a person has committed an offence for which the penalty does not exceed two hundred thousand penalty units or where a person has admitted the commission of an offence under this Act for which the penalty does not exceed two hundred thousand penalty units, summarily demand from the person the payment of a fine not exceeding six thousand penalty units in respect of the offence. 5 10

(2) An inspector or a toll collector shall, where the inspector or toll collector demands a payment under subsection (1), inform the person against whom the demand is made of the right to admit or dispute the liability.

(3) A person from whom payment of a fine has been demanded under subsection (1) may elect to admit liability and pay the fine or dispute liability. 15

(4) The payment of a fine shall operate as a bar to any further criminal proceedings against the person making the payment in respect of the offence concerned. 20

(5) An inspector or a toll collector who receives payment of a fine shall give a receipt to the person making the payment in such form as may be prescribed.

(6) An inspector or a toll collector who receives a payment under this section and— 25

(a) fails to issue a receipt to the person making payment as required under subsection (5);

(b) fails to account for any payment made under this section; or

(c) in any manner, misuses or puts to personal use any payment made under this section; 30

commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

Forfeiture
of vehicle

24. Upon the conviction of an offender under this Part, if the court is satisfied that the owner of the vehicle was a party to the offence or that the offence was committed with the knowledge of the owner of the vehicle, the court may, in addition to any other sentence, order the forfeiture of that vehicle to the State: 35

Provided that the forfeiture of the vehicle shall not be ordered under this section without giving the owner of the vehicle an opportunity to be heard.

25. (1) The Minister may, in consultation with the Minister responsible for finance, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.

Regulations

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for—

- 10 (a) the toll to be levied under this Act and the manner of payment and collection of the toll;
- (b) the designation of any road as a toll road;
- (c) the toll road in respect of which any toll may be levied, collected and retained;
- 15 (d) the classes of vehicles or persons for whose use the toll road is intended and from whom any toll may be collected and retained;
- (e) the toll that shall be charged during the concession period, or any part thereof;
- 20 (f) the place where any toll is to be collected and the form and manner of the collection;
- (g) the issuance, inspection and collection of receipts and the forms of authorisation, electronic or otherwise, for the purposes of the use of the toll road; and
- (h) anything that is required to be prescribed under this Act.

25 26. The Tolls Act, 1983, is hereby repealed.

Repeal of Cap.
465

Act No. 11 of
1983