GOVERNMENT NOTICE NO. 41

ROADS FUND ADMINISTRATION ACT

(CAP. 69:08)

ROADS FUND ADMINISTRATION (TOLLS) REGULATIONS, 2021

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IN EXERCISE of the powers conferred by section 30 of the Roads Fund Administration Act, I, FELIX LAFIEL MLUSU, Minister of Finance, after consultations with the Board, make the following Regulations—

Citation and commencement

1. These Regulations may be cited as the Roads Fund Administration (Tolls) Regulations, 2021, and shall come into operation on the 1st day of September, 2021.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"concessionaire" means a person authorized by the Minister to manage a toll road under a concession agreement pursuant to regulation 14, and includes a successor, delegate, transferee or assignee of the concessionaire;

"concession agreement" means an agreement made pursuant to regulation 13;

"Director" means the person designated as Director of Tolls under regulation 3 (2);

"frequent user" means a motorist who passes through a specific toll gate over ten times within the same month;

"frequent user discounted toll" means a toll levied on a frequent user of a specific facility for a specified period of time as prescribed in the Third Schedule hereto;

"local user" means a motorist driving a Malawian registered vehicle domiciled within a ten kilometre radius of an inland toll point;

"local user discounted toll" means a toll levied on a local user to a specific facility for a specified period of time as prescribed in the Third Schedule hereto;

"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;

"rehabilitation" means activities aimed at restoring the original condition of a road through relatively extensive works and includes pavement layer reconstruction, mill and replace, reshaping of the cross-section, reconstruction of the shoulders, drainage works and thick overlays;

"toll" means a fee paid or payable on any road, border post, bridge or pontoon where the toll administrator or a concessionaire, as the case may be, operates a toll point;

"toll collector" means a person appointed as such under regulation 5;

"toll point" means a point designated for the collection of tolls under regulation 7; and

"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—ADMINISTRATION

Designation of toll administrator points

3.—(1) The Administration is hereby designated as a toll administrator and shall be responsible for the implementation of these Regulations.

(2) The toll administrator shall designate a suitably qualified person, within the Administration, as the Director of Tolls.

Functions of toll administrator

4. The toll administrator shall have the following functions—

(*a*) regulate and operate toll gates;

(*b*) monitor compliance of concessionaires with the terms and conditions of concession agreements;

(*c*) advise the Minister on the operation and maintenance of toll gates.

(*d*) identify toll points on public roads;

(*e*) recommend toll fees to the Minister; and

(*f*) perform such other functions as may be conferred by, or under, these Regulations or any other written law.

Toll collectors

5.—(1) The toll administrator may, on such terms and conditions as it may determine, appoint a suitably qualified person as a toll collector for purposes of these Regulations.

(2) A toll collector may perform such other functions as the toll administrator may specify in writting.

(3) A toll collector shall remit to the toll administrator any toll collected under these Regulations.

PART III—TOLLS

Imposition of toll

6. There is hereby imposed a road toll.

Toll points

7.—(1) The toll administrator may establish and operate a toll point on any road, bridge or pontoon.

(2) The places on the public roads listed in the *First Schedule* hereto are designated as toll points.

Payment of toll

8.—(1) A driver of a vehicle shall, at the time of passing through a toll point, pay to a toll collector, the appropriate toll prescribed in the *Second Schedule* hereto in respect of his vehicle.

(2) Notwithstanding the provisions of subregulation (1), a driver of a vehicle may at the time of passing through a toll point, pay in advance the appropriate toll in respect of the vehicle for another toll point within the route to be taken by that driver.

(3) A driver of a vehicle domiciled within a radius of ten kilometres of a toll point may pay in advance the appropriate toll prescribed in the *Second Schedule*.

Discounted toll

9. A road user who is a local user or a frequent user shall buy a local user discount toll or a frequent user discounted toll, as the case may be, as prescribed in the *Third Schedule* hereto.

Exemptions

10.—(1) The Minister may, on such conditions as he may determine, exempt any vehicle or class of vehicles from the payment of the toll.

(2) Without prejudice to subregulation (1), an exemption made under this regulation may be general or restricted to a particular toll point or to specified duration.

(3) Free passage on toll points shall be granted to the following—

(*a*) emergency vehicles, including fire engines, police vehicles, ambulances;

(*b*) military vehicles;

(*c*) vehicles for contractors working on the construction, improvement, maintenance or development of the toll road; and

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

(4) The provisions of this regulation shall not apply to a temporary free passage, for a duration not exceeding twenty-four hours, that is provided for operational safety or emergency reasons as determined by the Director.

Use of toll fees

11. The toll fee or other charge imposed for the use of a tolled public road shall form part of the Roads Fund and shall be used for the maintenance or rehabilitation of the tolled public road or any other public road as may be determined by the Administration.

Suit for recovery

12. Any toll payable under these Regulations shall be a debt due to the toll administrator and may be recovered from a defaulting driver of the vehicle or owner of the vehicle, as the case may be, as a civil debt.

PART IV—CONCESSION AGREEMENTS

Concession agreement Cap. 46:07

13. The Minister may, pursuant to the provisions of the Public-Private Partnership Act, authorise any legal person to construct, operate, maintain or rehabilitate any toll point on a public road under a concession agreement.

Exercise of toll road function by concessionaire

14. A concessionaire shall exercise such functions in relation to a toll road as shall be specified in the concession agreement.

PART V—MISCELLANEOUS PROVISIONS

Offences and penalties

15.—(1) A person who—

(*a*) forcibly drives a vehicle through a toll point without paying the prescribed toll;

(*b*) having collected any toll, fails or refuses to remit the toll to the toll administrator;

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

(*d*) fails, neglects or refuses to obey an instruction or direction of the toll administrator, a toll collector, a concessionaire or a person authorised by the toll administrator or concessionaire;

(*e*) deposits glass, garbage, metal, food waste or any waste, a flammable or corrosive liquid or any other offensive matter on a toll road;

(*f*) in relation to a tolled road, defaces or removes any barricade, light, sign or notice;

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

(*h*) wilfully or negligently causes damage to any tolled road; and

(*i*) removes or destroys any barrier placed on a tolled road,

commits an offence and is liable, upon conviction, to a fine of one million Kwacha and to imprisonment for twelve months.

(2) In addition to the fine imposed under subregulation (1), the court may order the convict to pay the toll due and the repair cost of the damage caused to the road or infrastructure in the course of committing that offence.

Summary imposition of penalties

16.—(1) A toll collector may, where a person has admitted to the commission of an offence under these Regulations, summarily demand from the person the payment of the prescribed fine in respect of the offence committed.

(2) A toll collector shall, where he demands a payment under subregulation (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 subregulation (1) may elect to admit liability and pay the fine.

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

(5) 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) A toll collector who receives a payment under this regulation and—

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

(*b*) fails to account for any payment made; or

(*c*) in any manner, misuses or puts to personal use any payment made,

commits an offence and is liable, upon conviction, to a fine of ten million Kwacha and to imprisonment for twenty-four months.

(7) A person convicted of an offence under subregulation (6) shall be ordered to pay back to the Administration any money that he may have collected during the commission of the offence.

Forfeiture of certain vehicles

17. Upon the conviction of a driver 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 penalty, order the forfeiture of that vehicle to the State:

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

FIRST SCHEDULE

TOLL POINTS

1. Kalinyeke – on the M1 road in Dedza District
2. Chingeni – on the M1 road in Ntcheu District

SECOND SCHEDULE

VEHICLE SPECIFICATIONS AND APPLICABLE TOLL

Class of Vehicle	Type of Vehicle	Axles	K
Class 1A	Light vehicle	2	1,700.00
Class 1B	Pickup	2	3,400.00
Class 1C	Mini bus	2	3,400.00
Class 2A	17-31 passengers with rear double tyre	2	5,100.00
Class 2B	2 - 5 tones- with rear With rear double tyre	2	5,100.00
Class 3	> 31 passengers	3	5,100.00
Class 3	Above 5 - 10 tons	3	7,000.00
Class 4	> 10 tons	4 or more	8,000.00
Class 5	Abnormal load		20,000.00

THIRD SCHEDULE

APPLICABLE DISCOUNT RATES

Class of Vehicle	Type of Vehicle	Frequent user discount rate[1]	Local user discount rate[2]
Class 1A	Light vehicles	75%	20%
Class 1B	Pickups	75%	20%
Class 1C	Mini bus	75%	20%
Class 2A	17-31 passengers - with rear double tyre	–	20%
Class 2B	2 - 5 tones- with rear double tyre	–	20%
Class 3A	> 31 passengers	–	20%
Class 3B	Above 5 - 10 tons	–	20%
Class 4	> 10 tons	–	20%
Class 5	Abnormal load	–	20%

Made this 24th day of June, 2021.

F. L. MLUSU
Minister of Finance

(FILE NO.: RFA/ADM/14/25)

[1]Frequent user discount is only applicable on the 11th passage at the toll gate there after normal toll fee will apply until the other 11th passage for the discount to apply. Passages within a month shall not be carried forward to the following month.

[2]Local user discount shall be applicable to only those that reside within a radius of 10 kilometers of the toll gate and for a person who qualifies will need to apply to the Administration. The discount shall be renewable annually.