



Ministry of Transport and Public Works: Western Cape
Ministerie van Vervoer en Openbare Werke: Wes-Kaap
Isebe Lezothutho Nemisebenzi Yoluntu: Lentshona Koloni

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Chair of the Shareholders Committee of the Road Traffic Management Corporation –
the Honourable Minister of Transport - J S Ndebele.

My Fellow Shareholders of the Corporation.

Dear Chairman and Fellow Shareholders,

THE ROAD TRAFFIC MANAGEMENT CORPORATION AND ITS FUTURE

1. Purpose of the meetings of 22 and 23 August, 2011

We are today and tomorrow dealing with matters of great complexity. The documents (including my own) dealing with some of these complexities have only recently become available. My understanding of our intentions arising from our last meeting was that we would use these two days to discuss the future of the RTMC.

You will be aware that I have twice written to you to express my deep concerns regarding, inter alia, the status of eNaTIS; crash and intelligence reporting systems; AARTO; dual offices held by the CEO (at the time); non-payment of funds due to National Treasury and the on-going serious dysfunctionality of the RTMC.

In addition, I am tabling an overview of the difficulties besetting AARTO, not least concerning of which are the admissions by the CEO of the lack of capacity of the RTIA. Thus, my first recommendation is that we should consider the papers and other points brought up with a view to a final meeting and decision within two months.

2. Purpose of the RTMC Act

Section 2 of the Act calls for the “strengthening of national and provincial governments’ collective capacity to govern road traffic through partnerships with local government bodies and the private sector to ...ensure safety, security, order, discipline and mobility on the roads.”

In other words, the principal objective of the Act is to reduce the terrible accident carnage on our roads, and one to which I have unconditionally committed my Ministry since May 2009, with ever increasing success.

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3. Conclusion of the effectiveness of the Act and its recent implementations.

I have come to the unhappy conclusion that neither the Act in its present form, nor the way in which it has been implemented, and more specifically managed, works toward the achievement of its principle objective. Indeed, in many respects, they are now hindering the achievement of that objective.

4. The Act as an instrument for “collective capacity” in saving lives on the road.

It is clear that the intentions of the law makers in this regard were both idealistic and inclusive, and went to extraordinary lengths to achieve such inclusivity. However, having worked with the Act as a Shareholder for several years, I have come to the conclusion that the entity has been structured with a system of corporate governance which is unworkable in its present form.

4.1 Validity of the RTMC

The RTMC has failed to fulfil the terms of its establishment, insofar as it has failed to conduct the requisite numbers of quorate meetings per annum to perform its functions. Of those that were held, only one could be argued to be quorate. Shareholder Committee meetings have thus resulted in unquorate decisions, as well as decisions of which the SC was retrospectively informed, which have found their way into the Government Gazette.

Particularly In the absence of a Board, the Shareholders Committee is unquestionably the Executive Authority, whose responsibility and oversight are defined in great detail in the Act.

I mention just a few of the failures – In whole or in part - of the SC to meet those responsibilities -

9.1 et al – Failure to enter into governance agreement with the Board/CEO and thereafter publish as required;

11.1 Failure to meet 4 times per annum;

11.3 Failure to appoint a deputy chair;

14.1 Failure to timeously receive and publish a draft financial plan from the CEO;

-14.6.f Failure to set thresholds for CEO approval of tenders and granting of concessions;

-15.1 Failure to advertise the post of the CEO;

-15.4 Failure to conclude a performance contract with the CEO (Note – the Act makes no provision for an acting CEO);

-15.7 Failure to agree terms and conditions of remuneration with the CEO;

-22.4 Failure to duly publish annual reports of the RTMC;

-Treasury Regulation 30.1.1:- Failure to receive from the CEO a strategic plan at least six months before the start of the financial year.

In addition, Notice 310 of 2011 (GG 34316), "Appointment of Traffic Officers by the Chief Executive Officer of the Road Traffic Management Corporation" was only approved five months after implementation by the SC, and then in questionable circumstances. It has been averred that the appointment of the Acting CEO has been found to be unlawful, irregular and invalid in the judgment in the Labour Court matter between Morule and the RTMC. Its subsequent "approval" by the SC appears to be questionable as well.

Under these circumstances, any steps taken by the RTMC have been taken on an insecure legal footing. For example, any summonses or other action taken by the National Traffic Officers who have been appointed by the Acting CEO, may be legally invalid, and their issuance and pursuance may constitute further unlawful and irregular conduct.

It follows that the SC must take responsibility for every irregular or unlawful act that flows from the above omissions, and must ensure proper monitoring of the RTMC's performance and attainments of its goals.

I for one cannot accept such responsibility, nor ensure the requisite monitoring in a situation in which I am unable to play my statutory role in circumstances where corporate governance has, apparently, irretrievably broken down.

4.2 Probity and effectiveness of RTMC management and operational implementation.

4.2.1 Audit report

The RTMC has received its second "adverse" report in succession. Inter alia;

- the report understates operating expenses by R84m;
- Irregular, fruitless and wasteful expenditure exceed R82m, and
- the entity did not exercise oversight; prepare reports or keep proper records.

Most seriously, the entity increased its net loss to R80.7m. Its current liabilities exceed its total assets by R174.9m "which casts significant doubt in the entity's ability to operate as a going concern". In a word, the RTMC is bankrupt, and seriously bankrupt at that.

4.2.2 National Traffic Police Unit

I have expressed my concerns regarding the apparently unlawful institution of this unit. I am further informed that the officers may have been unlawfully appointed as peace officers; that some have serious criminal convictions, and that the issuing of firearms to them is also legally questionable.

It is therefore of concern to learn that the CEO of the RTMC has made proposals to the CEO of SANRAL that the NTPU "will be responsible for law enforcement on the proclaimed national road network with specified activities on the GFIP..." and that "Officers of the NTPU will be utilized exclusively for the proclaimed national road network, with particular specified activities on the GFIP portion."

Furthermore, "Any infringement notice or prosecution relating to the collection of toll shall be executed by RTMC on behalf of SANRAL...."

Most concerning is the following proposals:-

"the RTMC irrevocably agrees and undertakes to hold SANRAL harmless against any and all costs associated and/or caused by any litigation involving any traffic officers or traffic wardens including all other personnel of the RTMC and its agents arising from their actions in the execution of their lawful duties. In addition, the RTMC irrevocably undertakes and

agrees to indemnify and hold SANRAL harmless against any and all claims, damages and costs (including legal costs based on the attorney and client scale) of whatsoever nature howsoever arising from their actions in the execution of their lawful duties”.

This goes to the heart of failure of both RTMC corporate governance and management.

Whatever the status of the proposals, The CEO is contemplating the use of the RTMC as the toll collector of a very controversial freeway system with huge potential RTMC liabilities and risks without ever having consulted the SC. It is clear that some arrangement has been arrived at because SANRAL has undertaken to pay and equip the NTPU, and the NTPU costs are not included in the RTMC accounts or budget.

4.2.3 RTMC staffing matters

Without informing the SC, the entity has suspended at least one senior executive unlawfully, irregularly and illegally. That further, a number of individuals have been appointed to senior posts within the RTMC management structure, without regard to due process, some of whom do not possess the necessary qualifications for their posts.

4.2.4 RTMC strategy - goals and budgets going forward

Little purpose will be served by a detailed analysis of the future plans. They do not answer to the problems referred to above, and, in some cases, do not even refer to them. They will in many cases exacerbate the existing crisis, and in any event call for massive increases in budget which are neither affordable nor helpful.

5. Conclusion

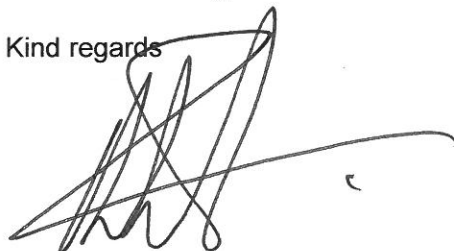
The picture that has developed of the internal functioning of the RTMC in the last three years is of administrative chaos. The catastrophic failures of the AARTO pilots in Tshwane and Johannesburg point to this picture of the status quo being accurate.

Critically, however, it is my view that the entire exercise of implementing AARTO is pointless if the entity charged with responsibility for that implementation is as completely dysfunctional as it appears to be.

I propose again that the current operations of the RTMC be re-absorbed into the National Department of Transport until all outstanding problems have been resolved; adequate capacities established and an acceptable and agreed governance framework put in place.

The Honourable Minister and Colleagues will understand that our joint responsibilities for road traffic management cannot be further jeopardized.

Kind regards



ROBIN CARLISLE
MEC OF TRANSPORT AND PUBLIC WORKS

Date: 22 August 2011