Amendments to the new Road Traffic Regulations:

Do you transport as a haulier or consignor, more than 500 mt of cargo a month by road? If so, brace yourself…

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Key industry sectors

- Transport
- Amendment – the detail
- Declaration
- Definitions
- Written agreement
- Compulsory Insurance
- Dangerous Goods - excluded
- Overloaded vehicles – onus on consignor
- Offences and penalties
- Conclusion

Amendment – the detail

The National Road Traffic Regulations Act 1996 (the “Act”) have recently been amended by the Minister of Transport in Government Gazette Notice No. R846 published on 31 October 2014.

All the above regulations will come into operation on 31 January 2015, which is three months after the date of publication of the Government Notice.

The amended Regulations deal with a wide range of issues, but in this note we will look at those that relate to the carriage of goods.
One of the issues that the regulations have sought to address is that of overloading, which is to be welcomed.

**Declaration**

A person operating a motor vehicle on a public road, a motor vehicle that carries goods must be in possession of a written declaration containing the following information:

- The license number of each vehicle or combination of vehicles;
- The nature and quantity of the goods transported;
- The contact particulars of the operator, or in the case of a combination of vehicles, of every operator in the combination of vehicles;
- The particulars of every consignor and consignee of the load or loads.

In addition, the operator must be in possession of a written agreement between the consignor and operator for the “transportation of goods” and a schedule of insurance.

**Definitions**

The Regulations define a 'goods vehicle' to mean a motor vehicle, (other than a motor cycle, motor tricycle, motor car, mini bus or bus) designed or adapted for the conveyance of goods on a public road and includes a truck-tractor, haulage tractor, adaptor dolly, converter dolly and breakdown vehicle.

An ‘operator’ is not defined. We understand the operator to be the road haulier.

A “consignee” is, the person who is named or otherwise identified in the declaration as the intended consignee of more than 500,000 kilograms of goods transported by a good vehicle: in a month and who actually receives such goods after they are transported by road.

A “consignor” is defined along similar terms, as a person:

- who is named or otherwise identified as the consignor of the goods in the declaration relating to the transportation of more than 500,000 kilograms of goods in a months by road; or
- who engages an operator of a vehicle to transport the goods by road or has possession of, or control of, the goods immediately before the goods are transported by road; or
- who loads a vehicle with the goods for transport by road at a place where the goods are stored in bulk or temporary held

but excludes: the driver of the vehicle, or; any person responsible for the normal operation of the vehicle during loading.

**Written agreement**

The declaration must contain information that includes a written agreement for the transportation of goods entered into between a consignor and operator. The written agreement must state the following:
The nature of the agreement;
The loading instructions; and
The responsibilities of the parties.

The consignor and operator enter into a written agreement prior to the consignor or operator hauling the goods on a public road.

Compulsory Insurance

The declaration must include a “schedule of insurance” in terms of which the consignee or consignor “insures” the goods to be carried on the motor vehicle and liability that might arise from the transportation of the goods (330C(g) read with Regulation 330D).

Regulation 330D prohibits a consignor or consignee from transporting goods on a public road or accepting the goods unless “such transportation is fully insured for damages that can occur as a result of an accident”.

It is not clear what “fully insured” means. It is probably too vague to be enforceable. There are different risks involved with the transportation of goods. A road accident can cause damage to the carrying vehicle, the goods, road infrastructure, vehicles driven by other road users and pedestrians. If harmful substances are spilt on the road as a result of a collision, major damage can be caused to the environment and environmental loss. An accident can give rise to indirect damages such as economic loss caused by the delay of the delivery of the cargo. This list is endless and not every possible loss can be insured. Carriers and consignors should procure the cover reasonably required of a carrier in the circumstances. A cargo owner have Goods-In-Transit (GIT) insurance in respect of his goods and the carrier have Carrier’s Liability Insurance and motor vehicle insurance.

The Regulation does not distinguish which insurances the consignee or consignor is obliged to take.

Dangerous Goods - excluded

A consignee or a consignor of dangerous goods in terms of Regulation 273 is expressly excluded from these definitions. Chapter VIII under the Act deals with the transportation of dangerous goods and substances by road.

Overloaded vehicles – onus on consignor

A consignor or consignee is prohibited from offering goods or accepting goods, as the case may be, if the vehicle is not loaded in terms of the Act (Regulation 330A(1)).

The consignor must obtain from the operator a written submission as to the payload of the vehicle and the distribution of the load on the vehicle (Regulation 330A(2)).

The Regulations also require the consignor to have a method of determining the mass of a vehicle and any axle or axle unit of such vehicle so as to ensure that the vehicle axle or axles are not overloaded in terms of the National Roads Traffic Act (Regulation 330B(1)).
A consignor is now obliged to keep a record of the mass of every load transported from his premises (Regulation 330B (2) which must be made available to any traffic officer upon demand (Regulation 330B (3).

The Regulations also prohibit a consignee or consignor from concluding a contract with an operator if the vehicle is overloaded (Regulation 330A (4).

These additional obligations that the Regulations impose on a consignor are breath taking when one considers what facilities a consignor would need to have access to in order to comply with these obligations, for example weighbridges and other mass measuring apparatuses.

In summary the consignor is obliged to:

- obtain from the operator a written submission as to the payload of the vehicle and the distribution of the load on the vehicle;
- have in place a method of determining the mass of a vehicle and any axle or axle unit of such vehicle; and
- keep a record of the mass of every load transported from his or her premises.

The consignee is prohibited from:

- accepting goods if the vehicle is not loaded and transported in accordance with the Act.
- entering into a contract with the operator to transport the goods if the vehicle is overloaded (Regulation 330A(4).

Once again, it is not clear how a consignee would know whether the vehicle is loaded in accordance with the Act, or what additional steps the consignee would need to take to ensure compliance, presumably on the part of the operator, with the Act.

The Regulations create a further anomaly and assume that the time of entering into the contract to transport the goods occurs at the same time the goods are loaded. In practice, these contracts may be entered into well before the goods are loaded onto the transporting vehicle.

If the operator “breaches” the contract by subsequently overloading the vehicle, the consignee may arguably have no right of recourse against the operator. One of the requirements to enter into a contract is that the contract must be lawful. In effect, the Regulations render the contract to be unenforceable as it expressly prohibited. This outcome is irrational. However, until the Regulations are amended to rectify this anomaly, we recommend that consignees and consignors comply with Regulation 330A as far as possible.

Offences and penalties

Any person who contravenes the Act will be guilty of an offence and upon conviction will be liable to a fine or to imprisonment for a period not exceeding one year.

Conclusion
Road hauliers, consignors, their brokers and underwriters now have to have written agreements in place. This means that they will have to have proper bespoke agreements or standard trading business terms, properly presented waybills and road manifests. Brokers advising clients and insurers are going to have to peruse the insurance provisions set out in Regulation 330D and decide what products to offer. In our view Regulation 330D is too vague to be enforceable. However, Regulation 330D is an indication of Government’s intention to create a system of compulsory insurance on the transportation of goods by road. We recommend that brokers advise their clients to ensure that they have GIT and Carrier’s Liability cover at the very least. This culture of compliance will no doubt assist when Regulation 330D is amended in the future.

Current agreements and standard trading terms will need to be revised in order to take into account the effects of the new regulations.