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E-TOLLING – GENERAL COMMENTS

This communication is not a legal opinion in any way whatsoever and only forwarded to yourselves for comment and for further discussion.

As you are all aware, motorists in Gauteng will be paying “toll fees” for the use of the new upgraded Gauteng freeways, to fund the Gauteng freeway development project.

Instead of motorists being billed monthly and receiving a statement for the usage of the E-Toll roads and which usage is linked to your motor vehicle license plate number (VLN), Sanral is currently pushing and encouraging motorists to rather purchase an E-Tag and to register as an E-Tag user, or to register as a VLN user.

In return for purchasing and registering as a E-Tag user / VLN user they promise that motorists may then qualify and be entitled to discounts, be categorized as either a E-Tag user or a registered VLN user to be entitled to discounted tolls. Should you elect not to register with Sanral, you will however not be entitled to any discounts or lower tariffs.

At first glance and when comparing the normal toll rates, to that of the discounted toll rates when you elect to register, the normal and reasonable uninformed motorist would be guided only by the discounts when signing up for registration.

After perusal of Sanral Terms & Conditions however, and which must be signed prior to registration, you will immediately note that the advantages of registering as an E-Toll user is very limited and comes with various onerous and one sided terms and obligations favoring only Sanral. Many clauses in their terms and conditions are being viewed by ourselves as well as other institutions as being either unlawful or in contravention of the Consumer Protection Act.

DISADVANTAGES FOR MOTORISTS WHO ELECT TO REGISTER AS AN E-TAG OR VLN USER

1. The discounts promised, and categorization as a registered E Tag user will not apply to all toll roads.
2. The onus is placed on the registered E-Toll user to establish their user categorization and/or the tolls applicable to a specific E-Toll road. The motorist can obtain the information from Sanral website.
3. A motorist who registers and thereafter fails to comply with any of Sanral's prescribed terms and conditions, will be deemed to be an E-Road violator and their account can be referred to a collection agency called "**Violations Processing Centre**" which is a division of Sanral itself. (See paragraph 2 of Sanral terms & conditions).
4. Motorist who register will be billed and will be liable for toll transactions recorded according to the user VLN or E-Tag.
5. Motorist who register agree and understand that their liability to incur toll when the motor vehicle passes a tolling point and that the amount of toll is calculated with reference to the tolling point and not with reference to the KM traveled before the user reaches the tolling point.
6. Motorist who register are given 3 payment options for topping up their E Toll accounts namely, Pre-Paid Accounts, Manual Top Up Payments, Automatic Top Up Payments, all associated with the risk taking into account that you are contracting with a wholly owned State Company where corruption is at the order of the day.
7. Motorists who register further agrees and undertakes to ensure at all times that there is sufficient funds in the E-Toll account and should you fail to make sufficient payments into your E-Toll account will give Sanral the right to hand over your account to VPC for collection purposes.
8. Motorists who register and who elect to link their E-Toll account to a credit card bank account, debit card further authorizes Sanral to:
 - a. debit the motorists account to fund the E-Toll account for Toll fees incurred when raised;
 - b. undertakes to ensure that sufficient funds are available in the account;
 - c. places the duty on the motorist to notify Sanral of bank account detail changes.
9. A registered motorist undertakes and agrees to settle all E-Toll transactions within any period required by Sanral.
10. Should the registered motorist fail to make payments when required to do so, Sanral will have the right without notice to the motorists to suspend the motorist account, to red list the E-Tag and to hand the account over for collection to **VPC**.
11. The registered motorist further agrees that failure to make payment in respect of an E-Toll transaction in terms of the terms & conditions may result in criminal proceedings against themselves.

12. By registering the motorist agrees and understands that a statement of charges will be available on the E-Toll website for download and that should hardcopies be requested, that Sanral will have the right to charge for furnishing such copies.
13. Registered motorists agree that any payment made to Sanral will be utilized against the oldest charge to the most recent.
14. Registered motorist E-Toll account will be suspended if not used for a period of 12 months and will have to be reactivated. (at a charge).
15. Registered motorist agrees further that Sanral will not be held responsible for any loss or damage a motorist may suffer as a result of incorrect banking details being provided by the user and captured by Sanral except for instances where Sanral or its agent acted with gross negligence.
16. Registered motorists agree to be liable for additional fees and attorney charges which may be incurred by Sanral in the collection of outstanding E-Toll amounts.
17. Registered motorists further consent to the onerous provision that it will be deemed that the fees charged by Sanral are correct and the onus is placed on the motorist to prove that such charges are incorrect.
18. Registered motorists will not be provided with a receipt when they proceed through the tolling point. A tax invoice may however be requested but then at the expense of the motorist.
19. By registering for an E Tag account the onus is placed on the motorist to change the motor vehicle details linked to the E Toll account when you lose possession of the vehicle or where ownership in respect of the vehicle is transferred to a third party. Failure to do so will mean that the motorist will remain liable for any E-Toll charges incurred.
20. By registering the motorist acknowledges and accepts that by purchasing an E Tag and registering same does not in itself necessary result in a valid passage on an E Toll Road and that you may be prevented by Sanral to continue driving on the E Road.
21. By registering, the motorist agrees and accepts that Sanral will be entitled and without notice to the motorist to suspend an E Toll account and to Red List an E Tag, for failure of any of Sanral terms & conditions. Should the motorist later prove that there was no transgression of Sanral terms & conditions, they will have no claim against Sanral as in terms of the agreement such claims are waived by the motorist in favor of Sanral.
22. Whilst ownership in the E Tag and E Tag holder remains the property of Sanral the risk of loss, theft or damage passes to you upon delivery.
23. **By registering, the motorist irrevocably authorizes Sanral or its duly authorized agents to obtain from any institutions where they may have an account or any credit bureau any information concerning themselves.**
24. **By registering the motorist further acknowledge and accepts that Sanral may unilaterally update and amend their terms & conditions and that the motorist has consented to such amendments and has agreed to abide by such amended terms & conditions.**
25. By registering for an E Tag, the motorist is affording Sanral a blanket indemnity for any wrong doing, loss or damage that the motorist may have suffered by using the E road.
26. A registered motorist further agrees to an unlawful provision in consenting to the jurisdiction of the Magistrate's Court of Pretoria in respect of all matters arising out of the terms & conditions.

A copy of Sanral terms and conditions is attached hereto for your ease of reference.

ADVANTAGES FOR MOTORIST WHO ELECTS NOT TO REGISTER AND RATHER PAY THE NORMAL TOLL RATE TARIFFS

1. Motorist will be billed for the use of the E Toll, without automatically being liable for such use, in the event of receiving incorrect readings from Sanral, theft, cloning of number plates, or the cloning of a motorist personal information etc
2. The onus will be on Sanral to prove that it was the motorist's vehicle that traveled the recorded distances.
3. Payments will be made and effected by the motorist into a Sanral bank account.
4. Sanral's collection division (VPC) will have no jurisdiction over non registered motorists.
5. Motorists will be entitled to monthly statements without any charge.
6. Motorists would be entitled to dictate how payments be allocated in respect of Toll road usage.
7. Motorists who do not register would not automatically be liable for additional fees or attorney charges.
8. The onus remains on Sanral to prove that the fees charged and for which the motorist is debited are correct.
9. Until an exemption notice is published motorist will be entitled to a receipt when paying for E Toll road usage.
10. In the event of a dispute with Sanral regarding outstanding charges, Sanral will not have the right to prevent the non registered motorist from continued use of the E Toll road.
11. Losses suffered by non registered motorist can be recovered by way of civil action.
12. Sanral will not have the right to have access to any private information of a non registered motorist.
13. Sanral will not have the right to amend any terms & conditions without the motorist agreeing to such amendments.
14. In the event of litigation, Sanral will have to issue a civil Summons or proceed criminally against the motorist in terms of the Criminal Procedure Act and will be forced to litigate against the motorist in a Magistrate's Court who has jurisdiction over that motorist. (It is unlawful to consent to the jurisdiction of a specific Magistrate's Court).

The above comment is made and must be read in conjunction with various sections of the National Credit Act, and the Consumer Protection Act. Should you have any further queries please do not hesitate to contact writer hereof.

Yours faithfully

Deon Botha