THE RAILWAYS BILL, 2019

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SCHEDULES:

FIRST SCHEDULE
SECOND SCHEDULE
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FIFTH SCHEDULE
AN ACT of Parliament to establish Kenya Railways Corporation as a network and train operator; to provide for the functions of the National Transport and Safety Authority as the railway economic and safety regulator; to provide for open access and licensing of other train operators; to establish the Railway Training Institute; and for connected purposes.

ENACTED by Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Railways Act, 2019.

2. In this Act, unless the context otherwise requires—
   “animals” means animate things of every kind except human beings;
   “Appeals Board” means the Transport Licensing Appeals Board established under section 39 of the National Transport and Safety Authority Act;
   “authorized employee” means an employee authorized to exercise powers or perform the duties in respect of which the expression is used;
   “Authority” means the National Transport and Safety Authority established under section 3 of the National Transport and Safety Authority Act, 2012;
   “charges” means all sums received or receivable, charged or chargeable, for, or in respect of any services performed or facilities provided under this Act;
   “consignee” means a person to whom goods are accepted for carriage by the operator or rail carrier are addressed;
   “consignment” means one or more package of goods or a quantity of loose goods tendered for carriage by one consignor to one consignee by the rail carrier;
   “consignor” means a person who has tendered goods which have been accepted for carriage by the rail carrier;
   “Cabinet Secretary” means the Cabinet Secretary responsible for railways;
   “Corporation” means the Kenya Railways Corporation established under section 4;
   “civil infrastructure” means—
   (a) track formation and drainage, but excludes the track;
   (b) fixed structures beside, over or under the track or otherwise associated with railway, including supports for overhead electric traction equipment and supports for signalling and telecommunications.
equipment but exclude the equipments;

“electric traction infrastructure” means equipment and systems associated with supply and reticulation of electricity for traction purposes, but excludes elements of civil infrastructure supporting or otherwise associated with the equipment or systems;

“fare” includes all sums received or receivable, charged or chargeable, for the carriage of a passenger by the rail carrier;

“free pass” means an authority, in writing, for the carriage of any person as a passenger by the rail carrier, without payment of fare;

“goods” includes luggage, animals (whether alive or dead) and all other movable property of any description;

“Corporation network” means the whole or any portion of the network that is owned, entrusted or vested in the Corporation and available for use by the public, passengers or freight services;

“infrastructure access charges” means the charges levied by the Corporation on a train operator using the Corporation network;

“infrastructure capacity” means the potential to schedule requested train paths on all or sections of the Corporation network for a certain period;

"infrastructure manager" means a person who maintains and repairs a railway line, operates its control and safety systems, maintains its network and controls railway traffic on the network; for the avoidance of doubt, the infrastructure manager and the railway line operator can be one and the same person.

“luggage” means such articles of personal apparel or for personal use, together with their containers, as are usually carried by passengers for their personal use or convenience, but does not include goods which, though carried in any such container or otherwise, are not intended for any such use;

“managing director” means the managing director of the Corporation appointed under section 17;

“network” means a system of railway infrastructure elements comprising track, civil infrastructure, train control systems and electric traction infrastructure which constitutes of running lines, railway yards, sidings and private sidings and any other matter that may be prescribed;

“network statement” means a statement prepared and published by a network operator in accordance with section 81;
“public or private networks” means the whole or any portion of a network not being part of the Corporation network, owned and managed by a public or private entity and is operated for the carriage of passengers or freight for hire or reward;

“operator” includes a train operator, station operator or any combination thereof;

“passenger” means a person, other than an employee on duty of the rail carrier, lawfully travelling on any train of the rail carrier;

“perishable goods” means goods liable to rapid deterioration and includes fish, fruit, vegetables, potatoes, plants, bread, meat, game, butter, eggs, milk, cheese, birds, poultry, small animals, and any other thing as may be declared by the Corporation as perishable goods; “rail carrier” means a person who carries passengers or goods for hire or reward on a railway line;

“railway line” means one or more adjacent running tracks forming a route between two points and is a segment of the railway network;

“railway line operator” means a person who holds a railway line operating licence under section 46;

“railway” means a guided system designed for the movement of rolling stock that has the capability of transporting passengers, goods or both on a track that includes the land, network, rolling stock, plant machinery, goods and other immovable or movable property of every description or kind used or set aside for use in connection with or for the purpose of railway operation and for purposes of this Act it comprises of the Corporation network and public or private networks;

“railways inspector” means a person appointed as a railways inspector under section 44D of the National Transport and Safety Authority Act, 2012;

“railway reserve” means the land reserved for railways;

“railway operation” means the activities performed by an operator;

“railway operating licence” means a licence granted by the Authority to an operator; “Railway Infrastructure” means facilities other than rolling stock necessary for a railway to operate efficiently and safely including railway track, associated track structures, over or under track structures, supports for railway equipment or for items associated with use of a railway, tunnels, bridges, stations, platforms, train control systems, signalling systems, communication systems, electric traction infrastructure, buildings, workshops and associated equipment;

“railway station” means a place designated for trains to stop, pick or let off
passengers or goods and includes a road service station operated by the Corporation to serve the railway;

“rates” includes all monies levied pursuant to this Act for, or in respect of, the carriage or warehousing of goods by the railway for, or any other service performed or facility provided by the railway;

“rolling stock” means a railway vehicle or other railway equipment that is able to operate on a railway, irrespective of its capability of independent motion, that is designed for movement on its wheels along a railway track and includes a locomotive, engine, track motor car, trolley, wagons, coaches, flanger or railway crane;

“safety rules” means requirements relating to railway safety submitted by the operator for approval by the Authority in accordance with the safety standards prescribed pursuant to this Act;

“safety authorisation” means a safety authorisation issued by the Authority to a network operator in accordance with section 56;

“safety certificate” means a safety certificate issued by the Authority to an operator in accordance with section 53;

“safety management system” means a formal framework for integrating safety into day-to-day railway operations and includes safety goals and performance targets, risk assessments, responsibilities and authorities, rules and procedures, monitoring and evaluation processes and any other matter prescribed;

“serious railway accident” means any accident involving train collision or derailment of trains, which results in —

(a) the death of at least one person;
(b) serious injuries to five or more persons;
(c) extensive damage to rolling stock, the infrastructure or the environment;

“station operator” means a person in responsible for the management of a railway station;

“Tariff Book” means the Tariff Book prepared and published in accordance with section 113;

“ticket” means a ticket issued by the operator, whether in print or electronic form and includes a single ticket, a return ticket, a season ticket or any other written
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authority (not a free pass) for the carriage of a passenger;

“trains” means rolling stock used, whether separately or in conjunction, on a railway;

“train operator” means a person in control of the movement and management of rolling stock on a network and holds a railway operating licence under section 69;

“train path” means the infrastructure capacity needed to run a train between two points over a given time-period;

“track” means the guidance system (rails) on which the rolling stock runs and its immediate support which may include rail connectors, sleepers, ballast, points and crossing, and substitute devices where used;

“train control systems” means signalling and telecommunications equipment provided and used as control equipment and has a central supervising system, and line-level systems managing the station-level sub-systems;

“warehouse” means any building, place, wagon, or vehicle when used by the Corporation for the purpose of warehousing or depositing goods;

“working timetable” means the data defining all planned train and rolling-stock movements which will take place on the relevant infrastructure during the period for which it is in force.

Object and purpose of the Act.

3. The object and purpose of this Act shall be to provide for the—

(a) development of railways including establishing urban public transportation;

(b) economic and safety regulation of the railways by the Authority including the regulation of the railway transport enterprise on commercial basis;

(c) open access to the railway infrastructure for operators;

(d) establishment of the Kenya Railways Corporation;

(e) financing of the Corporation;

(f) facilitate partnerships between the public and private sectors in the development, operation and maintenance of railways;

(g) ensure compliance with the relevant regional and International Conventions on transport that guides on the economic and environmental sustainability of railway transport;

(h) duties and rights for all users of the railways;

(i) collaborate with the county governments in ensuring safe and
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uninterrupted railway operations;

(j) undertake research for the purpose of encouraging innovations in the railway sector;

(k) ensure effective and efficient delivery of services and in the operations of the railways;

(l) priority in transport shall be given to materials for emergency rescue or disaster relief and other goods and materials that warrant such priority according to relevant regulations of the State.

4. This Act shall be guided by the following principles—

(a) to foster the development of the railways through provision of substantial financial and technical support by the Government;

(b) promote partnerships between the public and private actors in railway sector;

(c) promote economic and environmental sustainability in railway transport;

(d) promote fairness and competitiveness in railway operations;

(e) enhancing effectiveness and efficiency in the provision or services and operations of the railway sector;

(f) promote scientific and technological innovation in the railway sector;

(g) promote and provide for the safety and security of the public and personnel, and the protection of property and the environment, in railway operations.

PART II—ESTABLISHMENT OF THE KENYA RAILWAY CORPORATION

5. (1) There is established the Kenya Railways Corporation.

(2) The Corporation shall be a body corporate with perpetual succession, and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing and disposing of movable and immovable property;

(c) borrowing money with the approval of the National Treasury in accordance with the relevant law;

(d) entering into contracts; and
(e) doing such other things as may be necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The headquarters of the Corporation shall be in Nairobi.

6. (1) The functions of the Corporation shall be to—

(a) plan, develop, and construct railway infrastructure and other necessary or desirable works required for the purposes of the Corporation;
(b) maintain, repair and improve the Kenya Railway Corporation network;
(c) allocate infrastructure capacity to operators;
(d) control and manage traffic on the Kenya Railway Corporation network;
(e) undertake training in the railway sector;
(f) carry passengers or goods for hire or reward through a subsidiary or through a third party hired for that purpose;
(g) develop, own and manage on commercial basis directly or through a subsidiary or through third party hired for that purpose real estate along the Corporation network.

(2) The Corporation may assign all or part of its functions under this section to any other person, either by way of a concession agreement, management contract or otherwise.

7. (1) The Corporation shall have power—

(a) to carry on the business of real property owners and developers in all its aspects, together with that of estate and property managers and management agents, with respect to any property, movable or immovable, comprised in the Kenya Railway Corporation network to support railway development and operations;
(b) to carry on any business necessary or desirable for the purposes of the Corporation;
(c) to acquire, construct, manufacture, maintain or repair waterways or electric generating plants or apparatus necessary or desirable for the supply or transmission of water or of electric energy for the purposes of the Corporation and may supply water or electric energy to any person;
(d) to alter the course of, or raise or lower the level of, any water course or
road if such alteration, raising or lowering is necessary for the purposes of the Corporation, subject to approval by the respective Cabinet Secretary;

(e) to determine, impose and levy rates, fares, charges, dues or fees for any service performed by the Corporation or for the use by any person of the facilities provided by the Corporation or for the grant to any person of any licence, permit, or certificate;

(f) to prohibit, control or regulate—

(i) the use by any person of the services performed, or the facilities provided, by the Corporation;

(ii) the presence of any person, vehicle or goods within any inland waterways port or any premises occupied by the Corporation for the purposes of the Corporation.

(g) to sell, let or otherwise dispose of any property, movable or immovable, which by the resolution of the Board is not necessary for the purposes of the Corporation:

Provided that the Corporation shall not sell, let or otherwise dispose of any building, place or land placed at its disposal otherwise than with the consent of, and on conditions agreed by, the government;

(h) to act as an agent for any person engaged, whether within Kenya or elsewhere, in the performance of the services or the provision of facilities of a kind similar, or complimentary to, those performed or provided by the Corporation;

(i) to enter into agreement with any person—

(i) for the supply, construction, manufacture, maintenance or repair by that person of any property, movable or immovable, necessary or desirable for the purposes of the Corporation;

(ii) for the performance or provision by that person of any of the services or the facilities which may be performed or provided by the Corporation;

(iii) for the payments, collection or apportionment of any fares, rates, charges or any other receipts rising out of the performance or the provision by that person of any such services or facilities and for such purposes, to finance or assist in financing the activities of
the person, whether by way of loan, the holding of stocks, shares or securities, the guaranteeing of interests or the retention of any stocks, shares or securities or otherwise;

(j) to enter into an agreement with any person carrying on business as a carrier of passengers or goods, whether within Kenya or elsewhere, providing for the carriage of passengers or goods, by or on behalf of the Corporation, and of that person, under one contract or at a through fare or rate;

(k) to hold shares in any company or other body and to establish or acquire any subsidiary company;

(l) subject to the relevant laws, enter any land—

(i) to survey, excavate, take away any matter or timber on such land; or

(ii) prevent accidents either through cutting down or removing any tree or obstruction, other than a building, which poses danger or risk to the railways;

(iii) alter positions of pipes for the supply of gas, water or compressed air or oil, or the position of fibre cable, electricity cables, telephone or telegraphic wire;

(m) to enter into any arrangement with the Kenya Ports Authority which, in the opinion of the Board, will promote or secure the provision, or improved provision, of any service or facilities which may separately provide and without prejudice to the generality thereof any such arrangement or agreement may include provisions relating to —

(i) the use by either party or the facilities or equipment maintained by the other;

(ii) the temporary employment of staff by the other on secondment or otherwise;

(iii) the charges made in respect of the use of any service or facility to which the arrangement or agreement relates;

(iv) the financing of any project, by either or both parties;

(v) research connected within existing service or facility provided by any party or in relation to any service or facility under consideration; and
(vi) the joinder in the arrangement or agreement by any other person;

(2) In performing its powers pursuant to subsection (1)(a), the Corporation may, with the consent of, and under conditions agreed by, the Government—

(a) sell, let or otherwise dispose of any property; or

(b) enter into Public Private Partnerships in accordance with the Public Private Partnerships Act, 2013.

(3) For the avoidance of doubt, it is hereby declared that subsection (1) relates only to the Corporation as a statutory Corporation and nothing else in the provision shall be construed authorizing and disregard by the Corporation of any law.

(4) The powers conferred on the Corporation under this section to construct or execute any works, shall enable the Corporation to construct or execute works on—

(a) land vested on the Corporation or on land placed at its disposal by the Government for the purposes of the Corporation;

(b) in the case of land not so vested in, or placed at the disposal of, the Corporation, only with the agreement of the owner of the land on which such works are to be constructed or executed; or

(c) any other land required by the Corporation which shall be acquired in accordance with the relevant law.

8. (1) The management of the Corporation shall vest on the Board comprising of—

(a) a chairperson, appointed by the President;

(b) the Principal Secretary responsible for railways;

(c) the Principal Secretary responsible for the National Treasury;

(d) the Managing Director of the Kenya Ports Authority;

(e) not more than six persons, not being public officers or employees of the Corporation w

(f) the Managing Director, who shall be an ex officio member.

(2) The persons appointed under subsection (1) (b), (c), (d) and (e) may designate, in writing, a person to represent them in any meeting of the Board.

(3) The Cabinet Secretary shall by notice in the Gazette appoint the member of the
Board referred to under subsection (1) (f).

(4) The chairperson and members of the Board shall be appointed with due regard to gender balance for a term of three years, renewable once.

9. The functions of the Board shall be to—

(a) supervise the administration and management of the affairs of the Corporation;
(b) consider legislative proposals and recommend their enactment to the Minister;
(c) formulate policies and strategies of the Corporation and oversee their implementation thereof;
(d) approve the annual budget of the Corporation;
(e) approve any alteration in organization or establishment of the Corporation other than an alteration referred to in section 10(1); and
(f) give directions to the managing director.

10. (1) A person shall be qualified to be appointed as the chairperson, if that person—

(a) is a citizen of Kenya;
(b) holds a degree from a university recognised in Kenya in any of the following fields—
   (i) engineering;
   (ii) management;
   (iii) social sciences;
   (iv) economics;
   (v) law;
   (vi) business, public administration, or finance; or
   (vii) any other fields relevant to the functions of the Corporation;
(c) has at least fifteen years’ experience in the public service or as a practitioner in a relevant profession or industry; and
(d) satisfies the requirements of Chapter Six of the Constitution.

(1) A person shall be qualified to be appointed as a member of the Board, if that person—
(a) is a citizen of Kenya;
(b) has knowledge and experience in railways or transport matters or in commerce, industry, finance, administration or any other fields relevant to the functions of the Corporation;
(c) has at least fifteen years’ experience in the public service or as a practitioner in a relevant profession or industry; and
(d) satisfies the requirements of Chapter Six of the Constitution.

11. The members of the Board shall be paid such remuneration fees, allowances and disbursements for expenses as may approved by the Cabinet Secretary and in consultation with the Salaries and Remuneration Commission.

12. The chairperson or a member of the Board may vacate office if—
   (a) resigns from office, by notice in writing addressed to the—
       (i) in the case of the Chairperson by notice in writing to the President,
       (ii) Cabinet Secretary in case of a member;
   (b) dies;
   (c) is convicted of an offence and sentenced to imprisonment for a term of more than six months without the option of a fine;
   (d) is removed from Office in accordance with the provisions of section 10.

13. The chairperson or member of the Board may be removed from office on any of the following grounds—
   (a) in the case of the chairperson by the President, and in any other case of a member by the Cabinet Secretary;
   (b) has been absent from three consecutive meetings of the Board without notifying the chairperson;
   (c) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months without the option of a fine;
   (d) is convicted of an offence involving dishonesty or fraud;
   (e) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
   (f) is incapacitated by physical or mental illness or is deemed otherwise unfit to
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<th>Section</th>
<th>Text</th>
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<td>14. (1)</td>
<td>The chairperson and members may be removed from Office on grounds of—</td>
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<td>(a) non-compliance with Chapter Six of the Constitution;</td>
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<td>(b) inability to perform the functions of the Office</td>
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<td>(c) gross misconduct or misbehaviour;</td>
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<td>(d) incompetence; or</td>
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<td>(e) bankruptcy.</td>
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<td>(2) Prior to removal under subsection (1), the chairperson or member shall be—</td>
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<td>(a) informed, in writing, of the reasons for the intended removal; and</td>
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<td>(b) offered an opportunity to put in a defence against any such allegations.</td>
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<td>15.</td>
<td>The Corporation may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.</td>
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<td>16.</td>
<td>The Board may by resolution either generally or in any particular case, delegate to any of its committees or to any of its members, officers or employees, the exercise of any of its powers or the performance of any of its functions under this Act or under any other written law.</td>
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<td>17.</td>
<td>(1) There shall be a Managing Director of the Corporation who shall be competitively recruited by the Board on such terms and conditions that the Board shall determine.</td>
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<td>(2) In the exercise of his functions under this Act, the Chief Executive Officer shall, subject to the direction of the Board—</td>
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<td>(a) be responsible for the day-to-day management of the Corporation;</td>
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<td>(b) manage the funds, property and affairs of the Corporation;</td>
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<td>(c) be responsible for the management of the staff of the Corporation;</td>
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(d) approve any alteration in salaries, wages and other terms and conditions of service of the Corporation not involving expenditure in excess of limits determined by the Board;

(e) implement the policies, programmes and objectives of the Corporation;

(f) cause to be prepared for the approval of the Board—

(i) the strategic plan and annual plan of the Corporation;

(ii) the annual budget and audited accounts of the Corporation;

(g) perform such other duties as may be assigned by the Board.

(3) The Managing Director shall be appointed for a term of three years, renewable once.

18. (1) A person shall be qualified for appointment as the managing director, if that person—

(a) holds a masters’ degree in the field of engineering, management, social sciences, economics, business or public administration, law or finance or any other fields relevant to the functions of the Corporation from a university recognised in Kenya;

(b) has at least ten years relevant experience at senior management level in a public or private institution;

(c) satisfies the requirements of Chapter six of the Constitution

19. The Office of the Managing Director shall become vacant, if the holder—

(a) dies;

(b) by notice in writing addressed to the Cabinet Secretary resigns from office;

(c) is convicted of an offence and sentenced to imprisonment for a term of more than six months without the option of a fine; is removed from Office in accordance with the provisions of section 10.

20. (1) The Board may terminate the appointment of the Managing Director in accordance with his terms and conditions of service for—

(f) inability to perform the functions of the office arising out of physical or mental incapacity;

(g) gross misconduct;

(h) bankruptcy;
(i) incompetence or neglect of duty; or
(j) any other ground that would justify removal from Office under the terms and conditions of service.

(2) Prior to removal from office under paragraph (1), the Managing Director shall be—

(c) informed, in writing, of the reasons for the intended removal; and
(d) given an opportunity to put in a defence against any such allegations either in person or through an advocate.

21. The Board shall in consultation with the Cabinet Secretary establish such Directorates as may be necessary for the better carrying of the functions of the Authority.

22. (1) The Managing Director may with the approval of the Board appoint such officers and other staff as are necessary for the proper and efficient discharge of the corporation’s functions under this Act, and upon such terms and conditions of service as the board may in consultation with Salaries and Remuneration Commission determine.

(2) The Corporation may engage consultants and experts as it considers appropriate to assist it to perform its functions and exercise its powers.

23. (1) Any railway worker shall have the right to stop any person who is about to damage or destroy, or cause to move or shift, any railway signaling installation or other facilities for traffic operation, and any person who is about to place obstacle(s) on the railway track. The railway worker may catch such a person and hand him over to the public security authorities.

(2) Any railway worker shall have the right to stop persons who have gathered up to intercept a train, or to assault a railway traffic control office. The responsible public security personnel on site shall have the right to order those persons who refuse to stop such action to disperse; and if such a demand is refused, the responsible public security personnel on site shall, according to relevant regulations established by the State, choose to force them to disperse by necessary means. Those who refuse to obey shall be taken away from the site by force or detained.

(3) Any railway worker shall have the right to stop those persons who try to start a riot and rob goods and materials being transported on railways and may seize them and hand them over to the public security authorities; the public security personnel on site
may detain them.

(4) Any railway worker shall have the right to stop any person who is picking quarrels and stirring up troubles on board a train causing public disorder or jeopardizing the physical being or property of other passengers; the railway security personnel may detain such person.

**24.** (1) The common seal of the Corporation shall be kept in the custody of the Corporation Secretary, and shall not be used except upon the order of the Board.

(2) The common seal of the Board, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or certification by the Board under this section shall be presumed to have been duly given.

(3) The common seal of the Corporation shall be authenticated by the signature of the Chairperson of the Board and the Managing Director:
Provided that the Board shall, in the absence of either the chairperson or the Managing Director, nominate one member of the Board to authenticate the seal of the Board, in any particular matter, on behalf of either the chairperson or the Managing Director, as the case may be.

**25.** (1) A member, officer, agent or staff of the Corporation shall not be personally liable for any act or omission done or omitted in good faith in carrying out any of the functions of the Corporation under this Act.

(2) The provisions of subsection (1) shall not relieve the Board of the liability to pay compensation or damages to any person for any injury caused by the exercise of any power conferred by this Act.

**26.** The Board of the Corporation shall conduct its business in the manner set out in the First Schedule to this Act.

**PART III—FINANCIAL PROVISIONS**

**27.** The funds and assets of the Corporation shall consist of—

(a) such money as may be appropriated by the National Assembly for the purposes of the Office;

(b) any monies or property which may in any manner accrue or vest in the Corporation in the course of the exercise of its functions under this Act;

(c) monies allocated from the Railway Development Levy Fund established
(d) such money as may become payable to the Corporation by way of fares, charges or fees in respect of services rendered; and  
(e) all monies from any other sources provided, donated or lent to the Corporation.  
(f) such gifts as may be donated to the Corporation. 

28. The receipts, earnings or accruals of the Corporation and the balances at the end of each financial year shall be retained for the purposes for which the Corporation is established. 

29. Subject to the written approval of the Cabinet Secretary responsible for finance, the Corporation may invest any part of its funds in such a manner as it may consider appropriate. 

30. (1) There is established a Fund to be known as the Railway Development Levy Fund;  
(2) The Fund shall consist of —  
(a) The proceeds of the railway development levy charged under section 117A of the Customs and Excise Act, Cap. 472;  
(b) grants or donations made to the Fund;  
(c) any income generated from the proceeds of the Fund.  
(3) The objective and purpose of the Fund shall be to provide funds for the construction and maintenance of the railway network in order to facilitate the transportation of goods and passengers.  
(4) There shall be paid out of the Fund, payments in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established.  
(5) There is established a committee to be known as the Advisory Committee which shall consist of—  
(a) the Principal Secretary responsible for matters relating to finance who shall be the chairperson;  
(b) the Principal Secretary responsible for, matters relating to transport;  
(c) the Principal Secretary responsible for matters' relating to infrastructure;  
(d) the managing director of the Kenya Railways Corporation appointed under this Act shall provide secretarial services; and
(e) Attorney General.

(6) The functions of the Advisory Committee shall be—

(a) to review and approve the annual work programmes and cost estimates;
(b) to approve the annual budget;
(c) to approve disbursements from the fund; and
(d) to oversee the management of the Fund and advise the Cabinet Secretary in charge of finance generally on the operations of the Fund.

(7) (a) The expenditure of the Fund shall be on the basis of, and limited to, the annual work programmes and cost estimates which shall be submitted to the Advisory Committee for approval before the beginning of the financial year to which they relate.

(b) Any revision of the approved work programme and cost estimates shall not be implemented or incurred unless they have been approved by the Advisory Committee.

(8) All receipts, savings and accruals of the Fund and the balance of the Fund at the close of each financial year, shall be retained for the purpose for which the Fund is established.

(9) The existing government financial and procurement regulations shall apply in the administration of the Fund.

(10) The accounting officer responsible for transport shall be in charge of administering the Fund and shall -

(a) supervise and control the administration of the Fund;
(b) consult with the Advisory Committee on matters relating to the administration of the Fund as may, from time to time, be necessary;
(c) advise and consult with the Cabinet Secretary responsible for finance on matters relating to the administration of the Fund as may, from time to time, be necessary;
(d) cause to be kept all proper books of accounts and other books and records relating to the Fund and to the activities and undertakings financed by the Fund; and
(e) prepare, sign and transmit to the Auditor-General in respect of each financial year and within three months after the end thereof, a statement of account relating to the Fund in such form as the National Treasury may from time to time prescribe, in accordance with Public Financial
### Principles of operation.

31. (1) It shall be the duty of the Corporation to conduct its business according to commercial principles and to perform its functions in such a manner as to secure that, taking one year with another, its gross revenue is not less than sufficient to meet its outgoings which are properly chargeable to revenue account including proper allocations to the general reserve and provisions in respect of depreciation of capital assets, pension liabilities, and interest and other provision for the repayments of loans, and further to ensure that, taking one year with another, its net operating income is not less than sufficient to secure an annual return on the value of the net fixed assets in operation by Corporation of such a percentage as the Minister may direct from time to time.

(2) For the purposes of subsection (1)—

(a) “net operating income” shall be determined by subtracting from gross operating revenue all operating and administrative expenses including adequate provision for maintenance and depreciation but excluding interest and other charges on debt;

(b) “value of the net fixed assets in operation” shall be the gross value of those assets less the amount of accumulated depreciation shown in the statement of accounts of the Corporation:

Provided that, if the amounts shown in the statements of accounts do not reflect a true measure of the value of the assets concerned because of currency revaluations, changes in prices or similar factors, the value of the fixed assets shall be adjusted adequately to reflect such currency revaluations, changes in prices or similar factors.

(3) In the exercise of its duty under subsection (1), the Corporation may, subject to any directions of a general nature which may be given to the Board by the Minister responsible for finance, invest moneys standing to the credit of the Corporation in such securities as the Board thinks fit.

(4) Notwithstanding the provisions of paragraph (e) of section 8 (2), so far as is
not inconsistent with the provisions of this section or with the principles of prudent
finance, the Minister may, from time to time, in consultation with the Board, makes
provision for cheap transport to be provided by the Corporation to assist agriculture,
mining and industrial development in Kenya.

32. (1) The Corporation may borrow money required for the exercise of its functions
and for undertaking its obligations after approval by the Cabinet Secretary responsible
for finance in accordance with the provisions of the Public Finance Management Act.

(2) The Corporation may borrow money by the issue of loan stock on such terms
as may be approved by the Minister responsible for finance.

(3) The Corporation may otherwise borrow money or obtain credit in Kenya or
abroad for the purposes of the Corporation with the concurrence of, and subject to
such limitations as may be imposed by, the Minister responsible for finance.

(4) Such stock issued under the provisions of subsection (1) and such moneys
borrowed or credit obtained under the provisions of subsection
(2) as the Minister responsible for finance shall approve for the purposes of this
subsection, and all interest and other charges payable in respect of such stock, moneys
or credit, shall, unless the instrument or note evidencing or supporting such borrowing
shall otherwise provide, be charged upon all the property, undertakings and revenue of
the Corporation by operation of this section and without further charge or instrument.

(5) Any stock issued by the East African Railways Corporation which, by virtue
of any order made under subsection (4) of section 95, becomes the liability of the
Corporation shall, subject to the terms of such order, be deemed to be stock issued by
the Corporation and shall be held in the same right and on the same trusts and subject
to the same powers, privileges, provisions and charges as those in, on or subject to
which such stock was issued.

(6) Except as provided in this section, the Corporation shall not give or execute
any mortgage or charge over any of its property or assign its property by way of
security for borrowed money.

33. (1) At least five months before the commencement of each financial year, the
Board shall cause to be prepared estimates of the revenue and expenditure of the
Corporation for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of
the Corporation for the financial year concerned and in particular shall provide for—

(a) the payment of salaries, allowances and other charges in respect of the staff of the Corporation;

(b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the finances of the Corporation;

(c) the acquisition, maintenance, repair and replacement of the equipment and other movable property of the Corporation; and

(d) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance and the replacement of buildings or equipment, or in respect of such other matters as the Board may deem fit.

(3) The annual estimates shall be prepared by the Board at least two months before commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary.

(4) No expenditure shall be incurred for the purposes of the Corporation except in accordance with the annual estimates approved under subsection (3) or with prior written approval of the Cabinet Secretary and the Cabinet Secretary to the National Treasury.

34. (1) The financial year of the Corporation shall be the period of twelve months commencing on the 1st of July in every year and ending on the 30th of June in the next succeeding year.

35. The Board shall ensure that proper books of accounts of the income, expenditure, assets and liabilities of the Corporation are kept, and shall in this regard be subject to the provisions of the State Corporations Act.

36. (1) The Board shall, within a period of seven months after the end of each financial year, or within such longer period as the Cabinet Secretary may approve, submit to the Cabinet Secretary a report on the operations of the Corporation during that year, and the auditor's report, together with the yearly balance sheet and such other statements of account as the Cabinet Secretary shall require, and the Board shall publish them in such manner as the Cabinet Secretary may specify.

(2) A copy of every auditor's report, balance sheet and other statements of accounts submitted in accordance with subsection (1) shall be sent by the Board to the
Auditor-General, who may at any time examine the accounts, and the Auditor-General shall be entitled to require from the Corporation and its auditors such further information and explanation as he may consider necessary.

(3) The financial reports of the Corporation with the yearly balance sheet and such other statements of account as the Cabinet Secretary may deem appropriate, together with the auditor's report and any report made by the Auditor-General, shall be submitted through the Principal Secretary and the same shall be laid by the Cabinet Secretary before Parliament as soon as possible after it has been submitted to the Cabinet Secretary and shall constitute an integral part of the Cabinet Secretary’s report required under this section.

Railway investment programme.

37. (1) The Cabinet Secretary shall, once in every ten years, in consultation with the Board, cause to be prepared a railway investment program for approval by the Cabinet Secretary responsible for finance.

(2) The railway investment programme prepared under subsection (1) shall outline development and maintenance priorities costed with respect to stated sections of the railway, and also aggregated by such other detail as may be specified.

Limitations.

38. (1) Where any action or other legal proceeding is commenced against the Corporation for any act done in pursuance or execution, or intended execution, of this Act or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or of any such duty or authority, the following provisions shall have effect—

(a) the action or legal proceeding shall not be commenced against the corporation until at least one month after written notice containing the particulars of the claim, and of intention to commence the action or legal proceeding, has been served upon the managing director by the plaintiff or his agent; and

(b) the action or legal proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuing injury or damage, within six months next after the cessation thereof.

Restriction on execution against property of Corporation.

39. Notwithstanding anything to the contrary in any law—

(a) where any judgment or order has been obtained against the Corporation, no execution or attachment, or process in the nature thereof, shall be issued
against the Corporation or against any immovable property of the Corporation or any of its trains, vehicles or its other operating equipment, machinery, fixtures or fittings; but the managing director shall, without delay, cause to be paid out of the revenue of the Corporation such amounts as may, by the judgment or order, be awarded against the Corporation to the person entitled thereto;

(b) no immovable property of the Corporation or any of its trains, vehicles or its other operating equipment, machinery, fixtures or fittings shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the managing director.

40. (1) Where the amount paid for the carriage of any passenger or goods by the Corporation, or for inland waterways ports charges, is found to be incorrect, then if such amount is—

(a) an overcharge, the passenger or the person who paid the charge shall be entitled to a refund of the amount of the overcharge;

(b) an undercharge, the Corporation shall be entitled to collect the amount of the undercharge from the passenger or the person who paid the charge:

Provided that such overcharge or undercharge shall not be refunded or collected, as the case may be, unless a notice in writing containing such particulars as may reasonably be necessary is given—

(i) by the person claiming such overcharge to the managing director; or

(ii) by the managing director, to the person against whom the amount of such undercharge is claimed,

within six months after the commencement of the passenger’s journey or the acceptance of the goods by the Corporation, as the case may be, so, however, that where such undercharges caused by any information or description subsequently found to be incorrect such period of six months shall commence from the discovery by the Corporation of the correct information or description.

(2) Where a ticket issued under the provisions of this Act has not been used, a refund of the amount paid for that ticket, shall be given if, within two months of the
date of the expiry of the availability of such ticket, a notice in writing containing such particulars as may reasonably be necessary is given to the managing director by the person claiming the refund.

(3) Where the person claiming a refund under subsection (1) or subsection (2) proves, to the satisfaction of the managing director, that it was impracticable for him to notify the managing director of his claim within the times specified in those subsections and that such notification was made or given in reasonable time, nothing in those subsections shall prejudice the right of that person to obtain the refund.

PART IV—REQUIREMENTS FOR CONSTRUCTING A RAILWAY LINE

41. (1) A person shall not construct a railway line without the approval of the Authority.

(2) In granting the approval under this section, the Authority shall consider the following—

(a) a book of reference to the plan indicating the identity of the owners of the lands described in the plan; and

(b) proof that it has complied with all applicable requirements of the Environmental Management and Co-ordination Act needed as a proponent of the proposed railway line.

(3) The Authority may grant the approval if it considers that the location of the railway line is reasonable, taking into consideration requirements for railway operations and services and the interests of the localities that will be affected by the railway line.

(4) An approval granted under this section may contain any condition that the Authority considers appropriate including the period of time during which the approval remains in force, the minimum insurance coverage required of the person asking for the approval during the construction period, establishment by that person of effective procedures to deal with complaints of localities and persons affected by the construction of the proposed railway line, and acts or omissions that would cause the approval to be suspended or revoked.

(5) (a) The Cabinet Secretary shall by regulations prescribe standards for testing,
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<table>
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<tr>
<th>Accommodation works.</th>
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<td>design, construction and maintenance of railways by the authority.</td>
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</table>

(b) The Cabinet Secretary shall publish in the Kenya Gazette the railway standards formulated under this section.

(c) Each contractor or party shall comply with the railways standards prescribed by the Cabinet Secretary under this Act.

(6) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable, on conviction to a fine not exceeding 20 million shillings or to imprisonment for a term not exceeding five years or to both.

42. (1) A person who constructs a railway line shall during the construction of the railway line or as soon as practicable thereafter, construct and maintain the following accommodation works for the benefit of the owners and occupiers of lands adjoining those on which the railway line is constructed—

(a) such crossings, bridges or other works as, in the opinion of the Authority, are necessary for the purpose of making good any interruption caused by the construction of the railway line to the use of the lands through which the railway line is constructed;

(b) such culverts, drains or other works as, in the opinion of the Authority, are necessary to convey water as freely as is practicable from or to such adjoining lands as before the construction of the railway line:

(2) Notwithstanding the provisions of sub-section (1)—

(a) nothing in this section shall require the construction or the maintenance of any accommodation works in such a manner as to prevent or obstruct the proper operation of the railway line;

(b) where suitable accommodation works for the crossing of roads or watercourses have been constructed under this section and such road or watercourse is afterwards diverted by some person other than the person constructing the railway line, then, the person constructing the railway line shall not be required to construct other accommodation works for the crossing of the road or watercourse.
43. If at any time—

(a) the owner or occupier of any lands on which a railway line is constructed desires any accommodation works in addition to those, if any, constructed by the person constructing the railway line under section 44; or

(b) any public body proposes to construct a public road or any other works across a railway line, then the owner, occupier or public body, as the case may be, may require the person constructing the railway line to construct such accommodation works—

(i) as may be agreed between the person constructing the railway line and the owner, occupier or public body; or

(ii) if no such agreement is reached, as may be determined by the Authority, and the cost of constructing such accommodation works shall be borne by the owner, occupier or public body requiring them.

44. (1) Where, pursuant to the approval granted under Section 43, the person constructing a railway line proposes to construct a railway line across a public road, the Authority may, subject to subsection (3), require the person constructing the railway line to construct the railway line in such a manner that it does not cross such road on the level and to execute such other works as may be necessary for the safety of the public and the person constructing the railway line shall comply with such requirements.

(2) Where any railway line has been constructed so as to cross a public road on the level, the Authority may, subject to subsection (3), require the person constructing the railway line—

(a) to erect such gates; or

(b) to raise or lower the level of the public road so that it crosses the railway line above or below and not on the level, and to execute such other works as may be necessary for the safety of the public, and the person constructing the railway line shall comply with such requirements.

(3) The Authority shall, before making any requirement under this section,
communicate with the person constructing the railway line and the public body responsible for the maintenance of such public roads and shall take into consideration any representations made by the person constructing the railway line or that public body.

(4) Where, as a result of a determination made by the Authority under this section, any works are to be constructed by the person constructing the railway line, then the manner of the construction of such works and the apportionment of the cost of construction and maintenance thereof shall be determined by agreement between the person constructing the railway line and the public body responsible for the maintenance of the public road. If no such agreement is reached it shall be determined by the Authority.

**Certification of a new railway line.**

45. (1) Before any section of a new railway line is declared open for the public carriage of passengers or goods, the Authority shall furnish to the person having constructed the new railway line with a certificate attesting that such section complies with the standards laid down by the Authority and may, in the opinion of such engineer or other person, be opened for the public carriage of passengers or goods without danger to the public; and

(2) Upon the certificate referred to in subsection (1) being furnished, the Authority may by notice in the Gazette declare the section to which the certificate refers to be open for the public carriage of passengers or goods.

(3) For the purpose of this section, the expression “new railway line” does not include any diversion or re-alignment of track made to any existing railway line.

**Operation of a railway line.**

46. (1) A person who has constructed a railway line under Chapter I of this Part or who, on the day of coming into force of this Act, was the owner or lessee of an existing railway line, shall not operate the railway line without first having obtained from the Authority a railway line operating licence.

Provided that the owner or lessee of an existing railway line shall apply for a licence to operate the railway line within 6 months of commencement of this Act;

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable, on conviction to a fine not exceeding five million shillings or to
imprisonment for a term not exceeding five years or to both.

<table>
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<tr>
<th>Classes of licences.</th>
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<tr>
<td><strong>47.</strong> (1) The Authority may issue the following classes of railway line operating licenses for the operation of a railway line—</td>
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<tr>
<td>(a) a main line passenger service licence issued for the carriage of passengers on long-haul or intercity journeys;</td>
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<tr>
<td>(b) a commuter line service licence issued for the carriage of passengers in urban or sub-urban areas;</td>
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<tr>
<td>(c) a freight service licence issued for the carriage of goods;</td>
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<tr>
<td>(d) a track maintenance service licence issued to the infrastructure manager or one or more of its subcontractors for the purpose of maintaining the railway line and for assisting the holders of a licence issued under paragraphs (a), (b) or (c) in cases of emergency; or;</td>
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<tr>
<td>(e) a licence combining any or all of the above classes of licenses issued under paragraphs (a), (b), (c) or (d).</td>
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<th>Railway operating licence.</th>
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<tr>
<td><strong>48.</strong> Sections 69 to 76 of this Act shall apply with the necessary modifications to applications made under this chapter for a railway line operating license.</td>
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<th>Operation of rolling stock on the Kenya Railway Corporation network.</th>
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<td><strong>49.</strong> (1) A train operator shall not operate rolling stock on the Kenya Railway Corporation network unless the train operator—</td>
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<tr>
<td>(a) has established and maintains a safety management system which meets the requirements set out in section 51(1); and</td>
</tr>
<tr>
<td>(b) holds a current safety certificate in relation to the operation in question.</td>
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<tr>
<td>(2) The Corporation shall not permit the Corporation network to be used to operate rolling stock unless—</td>
</tr>
<tr>
<td>(a) the Corporation has established and maintains a safety management system which meets the requirements referred to in section 51(2);</td>
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<tr>
<td>(b) the Corporation holds a current safety authorization in relation to the Kenya</td>
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| Operation of rolling stock on a railway line. | 50. (1) A railway line operator shall not operate rolling stock on a railway line unless the railway line operator—  

- (a) has established and maintains a safety management system which meets the requirements set out in section 52; and  
- (b) holds a current safety certificate in relation to the operation in question.  

(2) An infrastructure manager shall not permit the railway line under its management to be used for the operation of rolling stock unless—  

- (a) the infrastructure manager has established and maintains a safety management system which meets the requirements set out in section 52;  
- (b) the infrastructure manager holds a current safety authorization in relation to the railway line in question; and  
- (c) the railway line operator who intends to use the railway line has complied with subsection (1). |

| Safety management system for the Kenya Railway Corporation network. | 51. (1) The requirements for a safety management system referred to in section 49 are that—  

- (a) it is established to ensure that the Kenya Railway corporation network—  
  - (i) can achieve the prescribed common safety targets; and  
  - (ii) is in conformity with relevant safety rules;  
- (b) it applies the relevant parts of the prescribed common safety methods;  
- (c) it meets the requirements and contains the elements set out in the Second Schedule, adapted to the character, extent and other characteristics of the operation in question;  
- (d) it ensures the control of all categories of risk including new or existing risks associated with the operation in question which, without prejudice |
to the generality of the foregoing, shall include such risks relating to the—

(i) supply of maintenance and material; and

(ii) use of contractors; and

(e) it takes into account, where appropriate and reasonable, the risks arising as a result of activities carried on by other persons; and

(f) all parts of it are documented.

(2) The requirements for a safety management system referred to in section 50 are the requirements in subsection (1) and that—

(a) it takes into account the effects of operations of train operators; and

(b) it contains provisions to ensure that the way in which the Corporation carries out its operation makes it possible for any train operator to operate in accordance with—

(i) the relevant safety rules; and

(ii) the means adopted by the train operator to meet the requirements referred to in section 5(4), of which the Authority accepted that there was sufficient evidence upon issue or amendment of its safety certificate pursuant to this chapter; and

(c) it aims to co-ordinate the emergency procedures of the Corporation with those of the train operators.

52. The requirements for a safety management system referred to in section 72 are that—

(a) it is adequate to ensure that the relevant statutory provisions which make provision in relation to safety will be complied with in relation to the operation in question;

(b) it meets the requirements and contains the elements set out in the Second Schedule, adapted to the character, extent and other characteristics of the operation in question;
(c) it ensures the control of all categories of risk associated with the operation in question which, without prejudice to the generality of the foregoing, shall include such risks relating to the—

(i) supply of maintenance and material;

(ii) use of contractors; and

(iii) placing in service of new or altered rolling stock the design or construction of which incorporates significant changes compared to any rolling stock already in use on the railway line and which changes would be capable of significantly increasing an existing risk or creating a significant safety risk;

(d) it takes into account, where appropriate and reasonable, the risks arising as a result of activities carried on by other persons; and

(e) all parts of it are documented.

53. (1) An application for a first safety certificate in respect of an operation shall—

(a) be made to the Authority by a train operator or a railway line operator;

(b) include the information set out in—

(i) Part 1 of the Third Schedule in respect of a Kenya Railway Corporation network application; and

(ii) Part 2 of the Third Schedule in respect of a railway line.

(2) Within 120 days of the date of receipt of the application, the Authority shall—

(a) issue a safety certificate for the operation in question; or

(b) notify the applicant that it has refused the application,

and in either case shall give reasons for its decision.

(3) A safety certificate shall—

(a) specify the type and extent of the operation in respect of which it is issued; and

(b) certify acceptance by the Authority that the applicant has provided
sufficient evidence—

(i) to demonstrate that the safety management system of the applicant meets the requirements set out in section 51 (1) in respect of a Kenya Railway Corporation network application or section 52 in respect of a railway line application; and

(ii) of the provisions adopted by the applicant to meet the safety rules that are necessary to ensure safe operation on the Kenya Railway Corporation network or the railway line, as the case may be,

and reference the information on which such acceptance is based; and

(c) be valid for no longer than five years from the date of issue and the period of validity shall be indicated in the safety certificate.

54. (1) Where it is proposed that the type or extent of an operation in respect of which a safety certificate has been issued is to be substantially changed then the holder of the safety certificate shall apply to the Authority for the safety certificate to be amended accordingly and the substantial change shall not be made until the safety certificate is so amended.

(2) An application for an amended safety certificate under this section shall—

(a) provide details of the change proposed; and

(b) provide details of any consequential changes to any information sent to the Authority in respect of the operation in question which remains relevant to that operation.

(3) Within 120 days of the date of receipt of the application the Authority shall—

(a) issue a notice making any necessary amendments to the matters set out in the safety certificate; or

(b) notify the applicant that it has refused the application,

and in either case shall give reasons for its decision.
### Renewal of safety certificate.

**55.** (1) At least ninety days before the expiry of a safety certificate the holder of that safety certificate may apply to the Authority for a renewed safety certificate to be issued for the operation in question.

(2) An application for a renewed safety certificate shall set out particulars of any changes to any information sent to the Authority in respect of the operation in question which remains relevant to that operation.

(3) Sections 53 (2) to (3) shall apply to an application for and the issuing of a renewed safety certificate as they apply to an application for and the issuing of a first safety certificate under section 53.

### Safety authorization.

**56.** (1) An application for a first safety authorization in respect of the Kenya Railway Corporation network or a railway line shall—

(a) be made to the Authority by the Corporation or an infrastructure manager;

(b) set out particulars of—

(i) the infrastructure in question;

(ii) how the safety management system of the applicant meets the requirements in section 51(2) in relation to a Kenya Railway Corporation network application or in section 52 in relation to a railway line application; and

(iii) how the provisions adopted by the applicant meet any requirements which are necessary for the safe design, maintenance and operation of the infrastructure in question.

(2) Within one hundred and twenty days of the date of receipt of the application the Authority shall—

(a) issue a safety authorization in relation to the infrastructure in question; or

(b) notify the applicant that it has refused the application; and

(c) in either case shall give reasons for its decision.
(3) A safety authorization shall—

(a) specify the infrastructure in respect of which the authorization is issued;

(b) accept that the applicant has provided sufficient evidence to demonstrate that the safety management system of the applicant meets the requirements—

(i) referred to in section 51(2) in relation to a Kenya Railway Corporation network application; or

(ii) in section 52 in relation to a railway line application;

(c) accept that the applicant has provided sufficient evidence of the provisions adopted by the applicant to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question;

(d) reference the information on which the acceptance referred to in paragraphs (b) and (c) is based; and

(e) be valid for no longer than five years from the date of issue and the period of validity shall be indicated in the safety authorization.

57. (1) Where it is proposed that a substantial change is to be made to—

(a) the infrastructure in respect of which a safety authorisation has been issued; or

(b) the principles of operation and maintenance of such infrastructure,

then the holder of the safety authorisation shall apply to the Authority for the safety authorisation to be amended accordingly and the substantial change shall not be made until the safety authorisation is so amended.

(2) An application for an amended safety authorisation under this section shall provide details of—

(a) the substantial changes proposed; and

(b) any consequential changes to any information sent to the Authority.
in respect of the operation in question which remains relevant to that operation.

(3) Within 120 days of the date of receipt of the application the Authority shall—

(a) issue a notice making any necessary amendments to the matters set out in the safety authorisation; or

(b) notify the applicant that it has refused the application, and in either case shall give reasons for its decision.

Renewal of safety authorization.

58. (1) At least ninety days before the expiry of a safety authorisation the holder of that safety authorisation may apply to the Authority for a renewed safety authorisation to be issued for the infrastructure in question.

(2) An application for a renewed safety authorisation shall set out particulars of any changes to any information sent to the Authority in respect of the operation in question which remains relevant to that operation.

(3) Sections 52(2) and 52(3) shall apply to an application for and the issuing of a renewed safety authorisation as they apply to an application for and the issuing of a first safety authorisation under section 56.

Notice of changes by holder of a safety certificate or a safety authorization.

59. The holder of a safety certificate or a safety authorisation shall, without delay, notify the Authority—

(a) of any major changes—

(i) to the means by which it meets the requirements relating to the safety management system as set out in section 51(1) in relation to an operation of a train operator on the Kenya Railway Corporation network or section 52 in relation to an operation of a railway line operator on the railway line;

(ii) in the case of a train operator or railway line operator, to the provisions adopted by it to meet any requirements necessary to ensure safe operation on the transport system in relation to the operation in question; or

(iii) in the case of the Corporation or the infrastructure manager of a
railway line, to the provisions adopted by it to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question;

(b) when persons first commence work directly relating to the operation which is of a type which has not previously been carried out in relation to that operation; or

(c) when types of rolling stock which are new to the operation in question are first introduced.

60. (1) The Authority shall revoke a safety certificate if it is satisfied that the holder—

(a) is no longer satisfying the conditions of that safety certificate and that there is a significant risk arising as a result; or

(b) is not operating rolling stock on the Kenya network or the railway line, as the case may be, as intended pursuant to that safety certificate and has not done so throughout the period of one year commencing with the date of issue of the safety certificate by the Authority.

(2) In this section, “conditions” means in relation to—

(a) any part of the requirements relating to the safety management system set out in—

(i) section 51 (1) in relation to an operation carried out on the Kenya Railway Corporation network;

(ii) section 52 in relation to an operation carried out on a railway line; or

(iii) that the provisions adopted by the applicant are sufficient to meet any requirements that are necessary to ensure safe operation on the transport system in question in relation to the operation in question;

(3) Before revoking any safety certificate, the Authority shall—

(a) notify the holder that—
(i) it is considering revoking that safety certificate and the reasons why;

(ii) within a period specified in the notice, which shall be not less than 28 days, the holder may make representations in writing to the Authority or, if the holder so requests, may make oral representations to the Authority; and

(iii) consider any representations which are duly made and not withdrawn.

(4) Where the Authority revokes a safety certificate, it shall send to the holder with the notice of revocation a statement of the reasons for revocation.

61. (1) The Authority shall revoke a safety authorization if it is satisfied that the holder is no longer satisfying the conditions of that safety authorization and there is a significant risk arising as a result.

(2) In this section, “conditions” means—

(a) any part of the requirements relating to the safety management system—

(i) referred to in section 51 (2) in relation to an operation carried out on the Kenya Railway Corporation network; or

(ii) in section 52 in relation to an operation carried out on a railway line; or

(iii) that the provisions adopted by the applicant are sufficient to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question.

(3) Before revoking any safety authorisation, the Authority shall—

(a) notify the holder that—

(i) it is considering revoking that safety authorisation and the reasons thereof;

(ii) within a period specified in the notice, which shall be not less
than twenty-eight days, the holder may make representations in writing to the Authority or, if the holder so requests, may make oral representations to the Authority; and

(b) consider any representations which are duly made and not withdrawn.

(4) Where the Authority revokes a safety authorization, it shall send to the holder with the notice of revocation a statement of the reasons why.

### General provisions relating to safety certificates and safety authorisations.

**62.** (1) Where an application is made under this chapter for a safety certificate or for an amended safety certificate which relates to an operation on the Kenya Railway Corporation network and on a railway line then—

(a) one application may be made for that operation but it shall be split into separate parts for the Kenya Railway Corporation network and the railway line; and

(b) this chapter shall apply to those parts as if they were a Kenya Railway Corporation network application and a railway line application, except that where the same information is required it need not be stated twice.

(2) A person may make one application for an operation in relation to which it requires both a safety certificate and a safety authorisation or an amended safety certificate and an amended safety authorization.

(3) An application under sub section (2) shall be split into separate parts relating to the safety authorisation and the safety certificate.

(4) This chapter shall apply to those parts as if they were an application for a safety authorisation and a safety certificate or an amended safety authorisation and an amended safety certificate, except that where the same information is required it need not be stated twice.

(5) Where an applicant—

(a) sends an application for a safety certificate or safety authorization, an amended safety certificate or safety authorization or further information to the Authority pursuant to subsection (5); or

(b) the holder of a safety certificate or a safety authorization sends a
then he shall at the same time either copy it to any affected party or notify any affected party without delay that the application or further information has been sent and of the address of the website where those documents may be accessed and how they may be accessed and, in either case, shall notify such a party, where the document in question is an application, of the time for making representations to the Authority pursuant to subsection (6).

(6) Where the Authority issues a—

(a) safety certificate or safety authorization;

(b) notice amending a safety certificate or safety authorization;

(c) notice refusing an application for a safety certificate or a safety authorization or an amended safety certificate or safety authorization;

(d) notice that it is considering revoking a safety certificate or a safety authorization; or

(e) notice revoking a safety certificate or a safety authorization,

then the Authority shall at the same time either copy it and the reasons given for the Authority’s decision to any affected party or notify any affected party that the relevant document has been issued and of the address of the website where those documents and the reasons given for the decision may be accessed and how they may be accessed and, in either case, shall notify such a party, where the document in question is a notice that it is considering revocation as mentioned paragraph (d), of the time for making representations to the Authority pursuant to subsection (6).

(7) The Authority may upon receipt of—

(a) an application for a safety certificate or safety authorization;

(b) an application for an amended safety certificate or safety authorization;

(c) any further information requested under this subsection,

request as soon as reasonably possible such further information as it may reasonably require and the applicant shall provide such information as soon as reasonably
(8) Where an affected party receives a copy of an application or a notice relating to revocation pursuant to subsection (3)(a) or (4)(d) then—

(a) he may make any representations in writing to the Authority, which are relevant to the application or notice, within 28 days of the date of issue of the application or notice in question; and

(b) the Authority shall consider any such representations in making its decision.

(8) If a request for information is made under subsection (5), the period of one hundred and twenty days for the Authority to make a decision referred to in sections 53(2), 53(3), 54(2) and 54(3) shall not start to run until the date of receipt of the last information requested.

(9) In this section, “affected party” shall mean any of the persons prescribed by the Authority.

63. (1) A police officer in uniform may stop and inspect any vehicle with a view to ascertaining whether or not the provisions of this Act or of any regulations made thereunder have been complied with, and may demand for inspection the production of any licence, certificate, document or record of any description whatsoever which may, under the provisions of this Act or of any regulations made thereunder be required to be carried on such vehicle and may require the driver or any other person travelling on such vehicle to give such information as such police officer may reasonably request in order to ascertain whether or not the provisions of this Act or regulations are being complied with.

(2) A person who obstructs any police officer in the exercise of the powers conferred on such police officer by this section, or fails to comply with any lawful order given by such police officer or refuses to give any information when requested so to do by such police officer, commits an offence and shall be liable on conviction, to a fine not exceeding five thousand shillings, and in the case of a second or subsequent offence to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year.
64. (1) A train operator who carries out operations on the Kenya Railway Corporation network shall send to the Authority an annual safety report in respect of its operations on the Kenya Railway Corporation network relating to the previous calendar year, which shall contain—

(a) information on how the transport operator’s safety targets, referred to in paragraph 2(b) of the Second Schedule, are met;

(b) the results achieved through putting the transport operator’s safety plans, referred to in paragraph 2(b) of the Second Schedule, into effect;

(c) the findings of safety auditing carried out pursuant to the procedures referred to in paragraph 2(k) of the Second Schedule; and

(d) comments on any deficiencies or malfunctions relating to the operation of rolling stock or the management of infrastructure relating to the operation in question that may be relevant to the safety of that transport system, and where an operation is carried out in part on the Kenya Railway Corporation network and in part on a railway line the report shall include only information in respect of the part carried out on the Kenya Railway Corporation network.

(2) The first annual report required under subsection (1) shall be sent by 30th June following the first calendar year of the coming into force of this Act and subsequent reports by 30th June in each subsequent calendar year.

65. Without prejudice to section 101, the Cabinet Secretary, in consultation with the Authority, may make regulations prescribing the procedure by which the Authority shall certify—

(a) infrastructure and rolling stock;

(b) personnel Corporation undertaking safety functions for railways; and

(c) railway training centres, and the safety standards and requirements that must be met by the relevant applicant.

66. (1) There shall be established a Railways Police Unit.

(2) All officers under this section shall have specialized training on railway
operations security.

(3) Major bridges and tunnels of State railways shall be manned by the Armed Police Forces.

67. A railways inspector may without prejudice to all other written laws, at all reasonable times and without a warrant -

(a) enter, inspect and examine any infrastructure and other property on which railway operations are being conducted;

(b) enter, inspect and examine any rolling stock used for railway operations;

(c) require the production of, inspect, examine, and take copies of licenses, permits, registers, records of any kind and other documents relating to this chapter and the carrying out of railway operations;

(d) upon giving the Corporation, an infrastructure manager, a train operator or a railway line operator 90 days' written notice, install any equipment on any infrastructure and other property on which railway operations are being conducted or on any rolling stock used for railway operations for the purposes of monitoring compliance with the provisions of this Act, or regulations made thereunder; and

(e) order the temporary cessation of railway operations where the officer considers that the railway operations are so hazardous as to constitute a serious and imminent danger to life.

68. (1) A person who—

(a) hinders or obstructs a railway inspector in the exercise of their general powers of search and inspection under section 67;

(b) fails to comply with a lawful order or requirement made by the railway inspector in accordance with section 67(e), commits an offence.

(2) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding three years or a fine of not less than
## PART VI — LICENSING OF TRAIN OPERATORS

### Railway operating licence.

69. (1) A person shall not operate rolling stock on a railway without a railway operating licence granted by the Authority in accordance with this Act.

(2) A holder of a railway operating license who intends to access the Corporation network, shall apply to the Corporation for train path as provided under sections 85.

(3) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable, on conviction to a fine not exceeding three million shillings or to imprisonment for a term not exceeding five years or to both.

### Classes of licences.

70. The Authority may issue the following classes of railway operating licences to a person wishing to operate rolling stock on a railway network—

- (a) a main line passenger service licence issued for the carriage of passengers on long-haul or inter county journeys;
- (b) a commuter line service licence issued for the carriage of passengers in urban or sub-urban areas;
- (c) a freight service licence issued for the carriage of goods;
- (d) a track maintenance service licence issued to the owners of railway network for the purpose of maintaining the railway network and for assisting the holders of a licence issued under paragraphs (a), (b) or (c) in cases of emergency; or
- (e) a licence combining any or all of the above classes of licences issued under paragraphs (a), (b) or (c).

### Application for a licence.

71. (1) An application to the Authority for a railway operating license, shall be in the manner prescribed in the Regulations and accompanied by such fee as may be prescribed.

(2) An application for a licence under subsection (1), shall—

(a) specify the scope of services to be rendered under the licence applied for;
(b) be accompanied by a comprehensive environmental impact assessment study and an Environmental Management Plan in accordance with the Environmental Management and Co-ordination Act or other existing laws in relation to the proposed service;

(c) provide proof of adequate liability insurance coverage in relation to the proposed service which satisfies the prescribed liability insurance coverage requirements;

(d) provide proof of the applicant’s ability to satisfy the prescribed financial requirements;

(e) provide proof of the safety assurance systems which are capable of averting damage during operations;

(f) provide proof that the organizational structure and the requisite professional competence and skills of the applicant satisfies the safety requirements;

(g) provide a safety management integrated plan; and

(h) any other additional information as the Authority may consider necessary or as may be prescribed.

72. (1) A person shall be eligible for the grant of a railway operating licence, if such person—

(a) is a body corporate;

(b) has been in railway operation for a period of not less than fifteen years;

(c) is not insolvent; and

(d) any other criteria which the Authority may determine or prescribe.

(2) the issuance of a railway operating license under subsection 1 shall be given to a body corporate with a shareholding of at least 15 % per centum is held by Kenyan citizens.

(3) A foreign company that wishes to apply for a railway operating license shall comply with the provisions of the Companies Act (Cap. 486) laws of Kenya.
## Issuance of licences

73. (1) The Authority may grant or decline to grant an application for a railway operating licence.

(2) In exercising its discretion under subsection (1), the Authority shall have regard—

(a) to the public interest, including the interest of persons requiring and those of persons providing facilities for transport;

(b) on whether there is sufficient capacity on the railway network;

(c) to such other matters as may be prescribed by regulations.

(3) Where the Authority has declined to grant a licence it shall within the prescribed period notify the applicant with written reasons for its decision.

(4) Any matter affecting licences to operate a network, operate trains or stations will be adjudicated upon by the Authority.

## Conditions for issuance of a licence

74. (1) A railway operating licence shall contain such conditions that the Authority considers appropriate and during the period of validity of the licence it shall be subject to any new conditions for the operation that the Authority may lay down to ensure compliance with this Act.

(2) The Authority may, from time to time, either on its own motion or on the application of a train operator, cancel or vary, any condition of the railway operating licence in accordance with the provisions of this Act.

(3) The Authority shall publish on its website the names of every licence holder and the conditions of the licence.

(4) A train operator who fails to comply with any condition contained in its railway operating licence commits an offence and shall be liable, on conviction, to a fine not exceeding (Five hundred thousand shillings or to imprisonment for a term not
exceeding three year or to both.

75. (1) Subject to the provisions of subsection (2), every railway operating licence shall, unless previously revoked, remain in force for five years from the date of issue.

(2) An applicant shall apply for a renewal of railway operating licence at least six months before the expiry of the licence.

(3) If on the date of the expiration of a railway operating licence, proceedings are pending before the Authority on an application for the grant of a new railway operating licence, the existing railway operating licence shall continue in force until such application is determined.

76. A railway operating licence shall not be transferable.
77. (1) The Authority may in accordance with this Act, revoke or suspend a railway operating licence, where the licensee—

(a) is in breach of the provisions of this Act or regulations made there under;

(b) fails to comply with a condition for the issuance of the railway operating licence

(2) The Authority shall, where it revokes or suspends a railway operating licence, inform the train operator in writing of the reasons for such revocation or suspension.

(3) Matters affecting the revocation of a licence will be adjudicated by the Appeals Board.

78. A person who—

(a) being an applicant for the grant or variation of a railway operating licence, is aggrieved by the decision of the Authority on the application;

(b) having made an objection to any such application as aforesaid, being an objection which the Authority is bound to take into consideration, is aggrieved by the decision of the Authority thereon; or

(c) being the train operator, is aggrieved by the revocation or suspension thereof,

may within the time and in the manner prescribed appeal to the Transport Licensing Appeals Board established under section 39 of the National Transport and Safety Authority Act.

79. A person who, for the purpose of—

(a) obtaining a railway operating licence;

(b) obtaining a variation of a railway operating licence;

(c) preventing the grant or variation of any railway operating licence; or

(d) procuring the importation of any condition or limitation in relation to a railway operating licence;

(e) knowingly omits, misleads or makes any false statement,

commits an offence and shall be liable, on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year.
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| Fees in respect  |  80. The holder of a railway operating licence shall pay such fees at such times and in such manner as the Cabinet Secretary may prescribe. |
| of licences.     |                                                                                                                        |
|                 | **PART VII — ACCESS TO KENYA RAILWAYS CORPORATION NETWORK BY TRAIN OPERATORS**                                          |
|                 |  81. (1) The Corporation shall, after consultation with interested parties, prepare and publish on its website a network statement for its railway network. |
|                 |      (2) The network statement shall contain the following information—                                                  |
|                 |          (a) a section setting out the nature of the infrastructure which is available to train operators and the conditions of access to it; that sets out in detail the general rules, timelines, procedures and criteria for charging and capacity allocation schemes, including such other information as is required to enable applications for infrastructure capacity; |
|                 |          (b) a section on charging principles and tariffs, which shall contain appropriate details of the charging scheme as well as sufficient information on charges that apply to the services listed in the First Schedule and which shall detail the methodology, rules and, where applicable, scales used for the application of section 97 (3), 98 and sections 99; |
|                 |          (c) a section on the principles and criteria for capacity allocation which shall—                                    |
|                 |              (i) set out the general capacity characteristics of the infrastructure which is available to train operators and any restrictions relating to its use, including likely capacity requirements for maintenance; |
|                 |              (ii) specify the procedures and deadlines which relate to the capacity allocation process. It shall contain specific criteria which are employed during that process, in particular— |
|                 |                  (A) the procedures according to which a train operator may request capacity from the network operator or the infrastructure manager; |
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(B) the requirements governing a train operator;

(C) the schedule for the application and allocation processes;

(D) the principles governing the coordination process;

(E) the procedures which shall be followed and criteria used where infrastructure is congested;

(F) details of restrictions on the use of infrastructure; and

(G) any conditions by which account is taken of previous levels of use of capacity in determining priorities for the allocation process.

The section shall detail the measures taken to ensure the adequate treatment of freight services, passenger services and requests subject to the ad hoc procedure.

(3) The network statement shall be kept up to date and modified as necessary.

(4) The network statement shall be published by the Corporation on its website no less than 120 days in advance of the deadline for requests for infrastructure capacity.

82. (1) Infrastructure capacity shall be allocated by the Corporation and once allocated to a train operator may not be transferred by that train operator to another train operator.

(2) The Corporation shall allocate infrastructure capacity on a transparent, fair and non-discriminatory basis.

(3) The right to use specific infrastructure capacity in the form of a train path may be granted to train operators for a maximum duration of one working timetable period.

(4) The Corporation may enter into a framework agreement, as provided under (section 84), for the use of capacity on the relevant railway infrastructure for a longer term than one working timetable period.

83. (1) Only train operators may apply to the Corporation for infrastructure capacity.

(2) The Corporation may set requirements with regard to applicants to ensure that its legitimate expectations about future revenues and use of the infrastructure are
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safeguarded, provided that such requirements shall—

(a) be appropriate, transparent and non-discriminatory;

(b) be published as part of the allocation principles in the network statement.

(3) The requirements in subsection (2) may only include—

(a) the provision of a financial guarantee that must not exceed an appropriate level which shall be proportional to the contemplated level of activity of the applicant; and

(b) assurance of the capability to prepare compliant bids for infrastructure capacity.

Framework agreements.

84. (1) Subject to the approval of the Authority, a framework agreement may be concluded between the Corporation and a train operator.

(2) The framework agreement shall specify the characteristics of the infrastructure capacity required by and offered to the train operator over a period of time exceeding one working timetable period.

(3) No framework agreement shall be such as to preclude the use of the relevant infrastructure by other train operators.

(4) A framework agreement—

(a) shall allow for the amendment or limitation of its terms to enable better use to be made of the railway infrastructure;

(b) shall be concluded for a period of five years or less, subject to renewal.

(5) A train operator who is already a party to a framework agreement shall apply in accordance with that agreement.

Schedule for the allocation process.

85. The Corporation shall adhere to the following capacity allocation schedule—

(a) the working timetable shall be established once per calendar year;

(b) the final date for receipt of requests for capacity to be incorporated into the working timetable shall be no more than ninety days in advance of the
entry into force of the working timetable; and

(c) not later than one hundred and twenty days after the deadline for submission of requests by train operators, the Corporation shall prepare a draft timetable.

| Scheduling. | 86. (1) The Corporation shall as far as possible meet all requests for infrastructure capacity, and shall as far as possible take account of all constraints on train operators, including the economic effect on their business.  
(2) The Corporation may give priority to specific services within the scheduling and coordination process but only as set out in section 85.  
(3) The Corporation shall consult interested parties about the draft working timetable and allow them at least thirty days to present their views.  
(4) For the purpose of subsection (3), “interested parties” shall include all those who have requested infrastructure capacity as well as other parties who wish to have the opportunity to comment on how the working timetable may affect their ability to procure rail services during the working timetable period. |

| Co-ordination process. | 87. (1) When the Corporation encounters conflicts between different requests during the scheduling process set out in section 86, it shall attempt, through coordination of the requests, to ensure the best possible matching of all requirements.  
(2) When a situation requiring coordination arises, the Corporation shall have the right, within reasonable limits, to propose infrastructure capacity that differs from that which was requested.  
(3) The Corporation shall attempt, through consultation with the appropriate train operators, to resolve any conflicts.  
(4) The principles governing the coordination process shall be defined in the network statement. |

| Congested infrastructure. | 88. (1) Where after coordination of the requested paths and consultation with train operators it is not possible for the Corporation to satisfy requests for infrastructure capacity adequately, then the Corporation shall immediately declare the section of infrastructure on which this has occurred to be congested; this shall also be done for |
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| Ad hoc requests. | 89. (1) The Corporation shall respond to ad hoc requests for individual train paths within five working days; information supplied on available spare capacity shall be made available to all train operators who may wish to use this capacity.

(2) The Corporation shall where necessary undertake an evaluation of the need for reserve capacity to be kept available within the final scheduled working timetable to enable them to respond rapidly to foreseeable ad hoc requests for capacity; this subsection shall also apply in cases of congested infrastructure. |

| Capacity analysis. | 90. (1) The objective of capacity analysis is to determine the restrictions on infrastructure capacity which prevent requests for capacity from being adequately met, and to propose methods of enabling additional requests to be satisfied; this analysis shall identify the reasons for the congestion and what measures might be taken in the short and medium term to ease the congestion.

(2) The analysis shall consider the infrastructure, the operating procedures, the nature of the different services operating and the effect of all these factors on infrastructure capacity; measures to be considered shall include in particular re-routing of services, re-timing services, speed alterations and infrastructure improvements.

(3) A capacity analysis shall be completed within 180 days of the identification of infrastructure which it can be foreseen will suffer from insufficient capacity in the near future. |

(2) When infrastructure has been declared to be congested, the Corporation shall carry out a capacity analysis as described in section 90, unless a capacity enhancement plan as described in section 91 is already being implemented.

(3) When infrastructure access charges in accordance with section 95 have not been levied or have not achieved a satisfactory result and the infrastructure has been declared to be congested, the Corporation may in addition employ priority criteria to allocate infrastructure capacity.

(4) The priority criteria shall take account of the importance of a service to the public, relative to any other service which will consequently be excluded.

(5) The procedures which shall be followed and criteria used where infrastructure is congested shall be set out in the network statement |
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91. (1) Within one hundred and eighty days of the completion of a capacity analysis, the Corporation shall produce a capacity enhancement plan.

(2) A capacity enhancement plan shall be developed after consultation with the train operators who use the relevant congested infrastructure and shall identify—

(a) the reasons for the congestion;

(b) the likely future development of traffic;

(c) the constraints on infrastructure development;

(d) the options and costs for capacity enhancement, including likely changes to infrastructure access charges.

(3) The capacity enhancement plan shall also, on the basis of a cost benefit analysis of the possible measures identified, determine what action shall be taken to enhance infrastructure capacity, including a calendar for implementation of the measures.

(4) The capacity enhancement plan shall be approved by the Authority.

(5) The Corporation shall cease to levy any infrastructure access charges which are levied for the relevant infrastructure under section 95(2) in cases where—

(a) it does not produce a capacity enhancement plan; or

(b) it does not make progress with the action plan identified in the capacity enhancement plan.

(6) The Corporation may, subject to the approval of the Authority, continue to levy any infrastructure access charges which are levied for the relevant infrastructure under section 95(2) if—

(a) the capacity enhancement plan cannot be achieved for reasons beyond its control; or

(b) the options available are not economically or financially viable.
### 92. (1) In particular for congested infrastructure, the Corporation shall require a train operator to surrender a train path allocated to it which, over a period of at least thirty days, has been used less than a threshold quota to be laid down in the network statement, unless this was due to non-economic reasons beyond the train operator’s control.

(2) The Corporation shall specify in the network statement conditions whereby it will take account of previous levels of use of train paths in determining priorities for the allocation process.

### 93. (1) A request for infrastructure capacity to perform maintenance shall be submitted during the scheduling process provided for in section 86.

(2) The Corporation shall take into account the effect of infrastructure capacity reserved for scheduled track maintenance on train operators.

### 94. (1) In the event of disturbance to train movements caused by technical failure or accident the Corporation shall take all necessary steps to restore the normal situation and to that end it shall draw up a contingency plan listing the various public bodies to be informed in the event of serious incidents or serious disturbance to train movements.

(2) In an emergency and where absolutely necessary on account of a breakdown making the infrastructure temporarily unusable, the paths allocated may be withdrawn without warning for as long as is necessary to repair the system, although the train operator affected by this withdrawal will be notified by the Corporation as soon as possible as to the nature of the emergency and for how long the path will be withdrawn.

(3) The Corporation may, if it deems it necessary, require train operators to make available to it the resources which it feels are the most appropriate to restore the normal situation as soon as possible.

### 95. (1) The Corporation shall levy and collect such infrastructure access charges as it determines on train operators using capacity on the Kenya Railway Corporation network.

(2) Except where specific arrangements are made under section 91 (2), the
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Corporation shall base the charging scheme in use on the same principles over the whole of the Kenya Railway Corporation network.

(3) The Corporation shall ensure that the application of the charging scheme results in equivalent and non-discriminatory access charges for different train operators that perform services of equivalent nature in a similar part of the market and that the access charges actually applied comply with the rules set out in the network statement.

96. (1) Train operators shall, on a non-discriminatory basis, be entitled to the minimum access package and track access to service facilities that are described in item 1 of the First Schedule.

(2) The supply of services referred to in item 2 of the First Schedule shall be provided in a non-discriminatory manner and requests by train operators may only be rejected if viable alternatives under market conditions exist.

(3) Where the Corporation offers any of the range of services described in item 3 of the First Schedule as additional services it shall supply them upon request to a train operator.

(4) Train operators may request from the Corporation a further range of ancillary services set out in item 4 of the First Schedule, without the Corporation being obliged to supply these services.

(5) Infrastructure access charges paid to the Corporation by the train operators shall be used by the Corporation to fund its business.

97. (1) The Corporation shall provide all necessary information on the infrastructure access charges levied and must be able to justify that infrastructure access charges invoiced to each train operator, pursuant to sections 95 to 100, comply with the methodology, rules, and where applicable, scales set out in the network statement.

(2) Without prejudice to subsection (3) or to section 96, the infrastructure access charges for the minimum access package and track access to service facilities shall be set at the cost that is directly incurred as a result of operating the train service.

(3) The infrastructure access charge may include a charge which reflects the scarcity of capacity of the identifiable segment of the infrastructure during periods of
congestion.

(4) For the purpose of infrastructure maintenance, separate infrastructure access charges may be levied for capacity used and such charges shall not exceed the net revenue loss to the Corporation caused by the maintenance.

### Exceptions to charging principles.

98. (1) In order to obtain full recovery of the costs incurred by the Corporation, the Corporation may levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, while guaranteeing the competitiveness of train operators in relation to other modes of transport, provided that the charging system does not penalize train operators for the productivity gains they achieve and that it does prevent the use of the railway infrastructure by train operators which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.

(2) For specific investment projects, in the future, or that have been completed not more than fifteen years before the entry into force of this Act, the Corporation may set or continue to set higher infrastructure access charges on the basis of the long-term costs of such projects if they increase efficiency or cost-effectiveness and could not otherwise be or have been undertaken.

(3) If the Corporation intends to modify the essential elements of the charging system referred to in subsection (1), it shall make them public at least 90 days in advance.

### Discounts.

99. (1) With the exception of what is provided in subsection (2), discounts shall be limited to the actual saving of the administrative cost to the Corporation and in determining the level of discount, no account may be taken of cost savings already internalised in the charge levied.

(2) The Corporation may introduce schemes available to all train operators, for specified traffic flows, granting time limited discounts to encourage the development of new rail services, or discounts encouraging the use of considerably underutilised lines.

(3) Discounts may relate only to infrastructure access charges levied for a specified infrastructure section and similar discount schemes shall apply for similar services.
<table>
<thead>
<tr>
<th>Reservation charges.</th>
<th>100. The Corporation may levy an appropriate charge for capacity that is requested but not used providing thereby an incentive for efficient use of capacity by the train operator.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confidentiality of commercial information.</td>
<td>101. The Corporation shall respect the confidentiality of commercial information provided to it by train operators under this chapter</td>
</tr>
</tbody>
</table>
| Appeals to the Authority. | 102. (1) Any train operator may appeal to the Authority, within 14 days, if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions taken by the Corporation concerning—

   (a) the network statement;
   (b) criteria contained within it;
   (c) the allocation process and its result;
   (d) the charging scheme; or
   (e) the level or structure of infrastructure access charges which it is, or may be, required to pay.

(2) The Authority shall ensure that charges set by the Corporation comply with sections 95 to 100 and are non-discriminatory.

(3) Negotiation between train operators and the Corporation concerning the level of infrastructure access charges shall only be permitted if these are carried out under the supervision of the Authority and shall intervene if negotiations are likely to contravene the requirements of sections 95 to 100.

(4) The Authority shall have the power to request relevant information from the Corporation or train operators, which must be supplied to it within fourteen days.

(5) The Authority shall be required to decide on any complaints and take action to remedy the situation within a maximum period of 60 days from receipt of all relevant information.

(6) A decision of the Authority shall be binding on all parties covered by that decision.

(7) In the event of an appeal against a refusal to grant infrastructure capacity, or
against the terms of an offer of capacity, the Authority shall either confirm that no
modification of the Corporation's decision is required, or it shall require modification
of that decision in accordance with directions specified by the Authority.

### PART VIII – CARRIAGE OF PASSENGERS AND GOODS

#### Chapter I - Responsibility as a Carrier

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>103.</strong></td>
<td>A rail carrier shall not be liable for the loss of life of, or for personal injury to, any passenger carried by it except where the loss of life or personal injury is caused by the want of ordinary care, diligence or skill on the part of the rail carrier or of any employee.</td>
</tr>
</tbody>
</table>
| **104.** | A rail carrier shall not be liable for any loss arising from the delay to any passenger caused—

(a) by the failure of any train to start on or complete any journey; or

(b) by the late starting or late arrival of any train from whatever cause arising |

| **105.** | (1) A rail carrier shall be liable for any loss or mis-delivery of, or damage to, goods carried by it occurring while the goods are in transit from any cause whatsoever unless the rail carrier proves that such loss, misdelivery or damage, arose from—

(a) act of God;

(b) act of war;

(c) act of terrorism;

(d) seizure under legal process;

(e) act or order of the Government;

(f) act or omission of the consignor, his servant or agent;

(g) inherent liability to wastage in bulk or weight, latent or inherent defect, vice or natural deterioration of the goods; or

(h) casualty including fire or explosion: |

Provided that where the loss, misdelivery or damage occurs in any of the cases
specified in this subsection due to the failure of the rail carrier, or of any employee, to use reasonable foresight and care in the carriage of goods, the rail carrier shall not be relieved from liability for such loss, misdelivery or damage.

(2) The rail carrier shall not be liable for loss, misdelivery or damage in respect of goods in relation to which an account false in any material particular has been given under section 106 or any incorrect or insufficient address for delivery has been given and such loss, misdelivery or damage is in any way caused by such false account or incorrect or insufficient address.

(3) The rail carrier shall not in any circumstances be liable for loss, misdelivery or damage in respect of goods—

(a) where there has been fraud on the part of the consignor;

(b) unless a document acknowledging receipt of such goods for carriage by the rail carrier has been given;

(c) where there is a loss of a particular market whether held daily or at intervals; or

(d) where the loss, misdelivery or damage arises from insufficient or improper packing or from riots, civil commotion, strikes, lock-outs, stoppage or restraint of labor from whatsoever cause whether partial or general.

106. The rail carrier shall not be liable for any loss arising from delay to, detention of or deviation in the carriage of goods unless such delay, detention or deviation is caused by the want of reasonable foresight and care on the part of the rail carrier or any employee:

Provided that the rail carrier shall not in any circumstances be liable for any loss arising from the delay to, detention of or deviation in the carriage of goods—

(a) where there has been fraud on the part of the consignor;

(b) unless a document acknowledging the receipt of such goods for carriage by the rail carrier has been given;

(c) where there is a loss of a particular market whether held daily or at
(d) where the delay, detention or deviation arises from insufficient packing or address, riots, civil commotions, strikes, lock-outs, stoppage or restraints of labor from whatsoever cause whether partial or general.

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<tr>
<th>Limitation of liability for animals.</th>
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<tr>
<td><strong>107.</strong> (1) The liability of the rail carrier in respect of any animal shall not in any case exceed the appropriate amount set out in the Tariff Book, unless at the time of the acceptance of such animal by the rail carrier for carriage the consignor, or his agent, declared that the value of the animal exceeded such appropriate amount and paid, or agreed to pay, such additional charges as may be determined in the Tariff Book in respect of such excess value, and thereupon the liability of the rail carrier shall not in any case exceed the declared value.</td>
</tr>
<tr>
<td>(2) In every proceeding against the rail carrier for the recovery of any sum in respect of any animal, the burden of proving the value of the animal and, where the animal has been injured, the extent of the injury, shall be upon the claimant.</td>
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</table>

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<tr>
<th>Limitation of liability for loss, etc., of specific articles.</th>
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</thead>
<tbody>
<tr>
<td><strong>108.</strong> (1) The liability of the rail carrier in respect of any prescribed article(s), and contained in any parcel or package, shall not, in any circumstances, exceed one thousand shillings unless at the time of acceptance of such parcel or package by the rail carrier for carriage the consignor or his agent declared that the value of such article or articles exceeded one thousand shillings and paid, or agreed to pay, such additional charges as may be determined in the Tariff Book in respect of such excess value; and thereupon the liability of the rail carrier shall not in any case exceed the declared value.</td>
</tr>
<tr>
<td>(2) It shall be a condition of the carriage of any parcel or package containing any article or articles the value of which has been declared to be in excess of one thousand shillings that the contents of such parcel or package may be inspected by an authorized employee at the time of such declaration.</td>
</tr>
<tr>
<td>(3) In any proceedings against the rail carrier for the recovery of any sum in respect of any article or articles the value of which has been declared to be in excess of one thousand shillings, the burden of proving the value of the article or articles and of any loss or damage thereto shall be upon the claimant.</td>
</tr>
</tbody>
</table>
109. The liability of the rail carrier in respect of any goods carried by the rail carrier in relation to which an account false in any material particular has been given under section 106 shall not in any case exceed the value of the goods as calculated in accordance with the description contained in such false account.

110. The Cabinet Secretary may prescribe the conditions and amounts by which a rail carrier may limit its liability under this Act.

Chapter II – Responsibility as a Warehouseman

111. (1) Subject to this Act, or any contract, the rail carrier shall not be liable for the loss, misdelivery or detention of, or damage to, goods—

   (a) delivered to, or in the custody of, the rail carrier otherwise than for the purpose of carriage;

   (b) accepted by the rail carrier for carriage where such loss, misdelivery, detention or damage occurs otherwise than while the goods are in transit,

(2) except where the loss, misdelivery, detention or damage is caused by the want of reasonable foresight and care on the part of the rail carrier or of any employee:

Provided that—

   (a) the rail carrier shall in no case be liable for the loss, misdelivery, detention or damage arising from—

      (i) act of God;

      (ii) act of war;

      (iii) act of terrorism;

      (iv) seizure under legal process;

      (v) act or order of the Government;

      (vi) act or omission of the consignor, consignee, or depositor, or of the servant or agent of any such person;

      (vii) fire, flood, tempest, riots, civil commotions, strikes, lock-outs, stoppage or restraint of labour from whatever cause whether
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Limitation of liability for loss, etc., of goods deposited in cloakroom.

112. (1) The liability of the rail carrier for any loss or misdelivery of, damage to or delay in the delivery of any goods deposited in a cloakroom shall not in any case exceed two hundred shillings unless at the time of such deposit the person depositing the goods declared that the value thereof exceeded that amount and paid, or agreed to pay in writing, such additional charge as may be determined in the Tariff Book in respect of such excess value; and thereupon the liability of the rail carrier shall not in any case exceed such declared value.

(2) For the purposes of this section the expression “cloakroom” means any place provided by the rail carrier in connection with the transport services provided by it as a facility for the temporary deposit of goods by passengers and other persons.

Chapter III – Operations of the rail carrier

113. (1) The rail carrier shall—

(a) determine the conditions upon which passengers and luggage shall be carried by the rail carrier and different conditions may be determined in different cases; and such conditions shall be published in the Tariff
(b) determine the rates, fares and charges for the carriage of passengers and luggage by the rail carrier and such rates, fares and charges shall be published in the Tariff Book and shall, subject as aforesaid, have effect from the date of such publication or from such later date as may be specified therein:

Provided that provision shall be made for the carriage of a specified amount of baggage by a passenger free of charge, and different amounts may be determined for passengers travelling by different classes;

(c) determine the different classes of accommodation available to passengers in trains of the rail carrier.

(2) Notwithstanding the provision of subsection (1), the rail carrier may, in relation to the special circumstances of any particular case, determine conditions, rates, fares and charges applicable to such case for the carriage of passengers and luggage by the rail carrier and such conditions, rates, fares and charges shall have immediate effect in relation to such case:

Provided that—

(a) such conditions, rates, fares and charges shall as soon as practicable after such determination be published in the Tariff Book; and

(b) the determination of such conditions, rates, fares and charges shall not of itself constitute an undue preference.

114. Subject to this Act, any person who has tendered to an authorized employee of the rail carrier the proper fare for the ticket he desires shall be entitled to obtain such ticket and to be carried as a passenger by the rail carrier in accordance with the conditions subject to which the ticket is issued:

Provided that if, in the opinion of an authorized employee, a person who applies for a ticket, or a person in possession of a ticket or free pass, appears—

(a) to be suffering from any mental disorder;
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(b) to be suffering from any contagious or infectious disease; or

c) to be under the influence of liquor,

such person shall not be entitled to obtain such ticket or to be carried as a passenger save under, and in accordance with, any special provisions dealing with the carriage of any such person.

115. (1) Every ticket and free pass shall be issued by the rail carrier subject to the provisions of this Act and, in addition to any other conditions, to the condition that—

(a) there is room available in the train of the class for which the ticket or free pass is issued;

(b) an authorized employee may require the passenger to move from one compartment to another of the same class for the purpose of the better use of the accommodation of the train; and

(c) the passenger shall, on being required so to do, present his ticket or free pass for examination by an authorized employee and shall deliver up the ticket or pass to the employee—

(i) in the case of a ticket or free pass issued for a particular journey, at or near the end of such journey;

(ii) in the case of a season ticket or free pass, at the expiration of the period for which it was issued.

(2) If no room as is referred to in paragraph (a) of subsection (1) is available, the holder of a ticket—

(a) may obtain a refund of the fare which he has paid on his returning the ticket to an authorized employee as soon as practicable; or

(b) may elect, subject to there being available room to travel in a lower class and shall, upon drawing as soon as practicable the attention of an authorized employee to such fact, be entitled to obtain from such employee a certificate that he is entitled to a refund and shall, on presenting that certificate to an authorized employee, be entitled to a refund of the difference between the fare which he paid and the fare
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<table>
<thead>
<tr>
<th>Persons without valid ticket, etc., may be removed from train, etc.</th>
<th>payable in respect of the class in which he travelled: Provided that the provisions of this subsection relating to a refund shall not apply to the holder of a season ticket.</th>
</tr>
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<tbody>
<tr>
<td>116. A person shall not be upon any train of the rail carrier for the purposes of travelling therein as a passenger unless he is in possession of a valid ticket or free pass; and any person found on a train without a valid ticket or free pass may, without prejudice to any other action which may be taken against him, be required by any employee of the rail carrier to leave the train and, if he does not do so, may be removed there from with such force as may be reasonable and necessary in the circumstances.</td>
<td></td>
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<tr>
<td>Fares, etc., payable by persons travelling without a valid ticket, etc.</td>
<td>117. (1) A person who— (a) travels on any train of the rail carrier without a valid ticket or free pass; or (b) being in, or having come from, any such train does not present his ticket or free pass for examination or does not deliver up his ticket or free pass in accordance with the conditions on which the ticket or free pass is issued, shall be liable to pay on demand by an authorized employee the fare for the distance he has travelled or proposes to travel and, in addition, such excess charges as the rail carrier may determine and publish in the Tariff Book; and for the purpose of ascertaining such fare it shall be presumed that such person has travelled from the station— (i) from which the train originally started; or (ii) if the tickets or free passes of passengers have been examined during the journey and found to be in order, from the place where they were last examined and found in order, unless he satisfies such authorized employee to the contrary. (2) Any person who— (a) travels in a class of a train higher than that for which he is in possession of a valid ticket or free pass; or</td>
</tr>
</tbody>
</table>
(b) travels in a train beyond the place authorized by his ticket or free pass, shall be liable to pay on demand by an authorized employee a fare equal to the difference between the fare he has paid and that which he should have paid and, in addition, such excess charges as the rail carrier may determine and publish in the Tariff Book.

(3) If, on demand by an authorized employee, any person refuses to pay the fare and excess charge for which he is liable under this section, any authorized employee or any police officer may, if there is reasonable ground for belief that there would be difficulty or delay in bringing such person before the court by any other means, arrest and detain that person without a warrant and bring him, as soon as practicable, before a court having jurisdiction to deal with him in accordance with the provisions of this Act.

118. (1) Subject to this Act, every passenger shall on payment of the appropriate charge, if any, be entitled to deliver his luggage to an authorized employee for carriage by the rail carrier in the appropriate part of the train and to receive a document of receipt for each piece of luggage so delivered.

(2) Luggage shall be carried by the rail carrier subject to the provisions of this Act, and, in addition to any other conditions—

(a) to the condition that unless the luggage is delivered to an employee for carriage in accordance with subsection (1), it shall be carried at the risk of the passenger; and

(b) to the condition that the provisions of this Act in respect of the carriage of goods shall apply to the carriage of luggage save in so far as it is otherwise specifically provided

119. (1) The rail carrier may, subject to the provisions of this Act, determine the conditions upon which goods shall be carried or warehoused by the rail carrier and different conditions may be determined in different cases; and such conditions shall be published in the Tariff Book and shall, subject as aforesaid, have effect from the date of such publication or from such later date as may be specified therein.

(2) Notwithstanding subsection (1), the rail carrier may, in relation to the special
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circumstances of any particular case, determine conditions, rates and charges applicable to such case for the carriage or warehousing of goods by the rail carrier or for any other service or facility and such conditions, rates and charges shall have immediate effect in relation to such cases:

Provided that—

(a) such conditions, rates and charges shall, if they are of a continuing nature, be available to the public on request; and

(b) the determination of such conditions, rates and charges shall not of itself constitute an undue preference.

General right to have goods carried.

120. Subject to this Act, any person who has tendered to an authorized employee the appropriate rates and charges, and has complied with the conditions upon which goods may be accepted for carriage by the rail carrier, shall be entitled to receive a document of receipt for such goods and to have such goods carried by the rail carrier in accordance with the conditions of carriage:

Provided that if, in the opinion of an authorized employee—

(a) any animal tendered for carriage appears to be suffering from any infectious or contagious disease;

(b) any goods tendered for carriage are goods to which section 119 applies;

(c) any goods tendered for carriage exceed the maximum weight or dimension specified in the Tariff Book;

(d) any goods tendered for carriage are insufficiently or improperly packed;

(e) any animal tendered for carriage is wild or dangerous;

(f) the carriage of any goods would at any stage of the transit thereof be contrary to any law; or

(g) facilities for dealing with the goods tendered for carriage are not available at the place where such goods are tendered or at the place of destination or at any place en route,

the person tendering such goods for carriage shall not be entitled to have such goods
carried by the rail carrier save, when such goods are accepted for carriage, under and in accordance with any special provisions dealing with the carriage of such goods.

121. (1) The consignor of, or the person tendering, any goods to the rail carrier for carriage or warehousing and, on request by an authorized employee, the consignee of, or person receiving, any goods which have been carried or warehoused by the rail carrier, shall deliver to an authorized employee an account in writing signed by the consignor, person or consignee, as the case may be, containing such a description of the goods as may be sufficient to enable such employee to determine the rates and charges payable in respect of the carriage or warehousing thereof by the rail carrier.

(2) Any authorized employee may, for the purpose of checking any account delivered under subsection (1), require such consignor, person or consignee, as the case may be, to permit him to examine such goods.

(3) If such consignor, person or consignee fails to deliver the account referred to in subsection (1) or to permit such goods to be examined as required under subsection (2), an authorized employee may—

(a) in respect of goods which are tendered to the rail carrier for carriage or warehousing, refuse to accept the goods for such carriage or warehousing unless in respect thereof a rate or charge not exceeding the highest rate or charge payable for any class of goods is paid; or

(b) in respect of goods which have been carried by the rail carrier, refuse to deliver such goods unless in respect thereof a rate or charge not exceeding such highest rate or charge is paid.

(4) If, in respect of goods which have been carried or warehoused by the rail carrier, an account delivered under subsection (1) is found to be false in any material particular with respect to the description of any goods to which it purports to relate, an authorized employee may refuse to deliver such goods unless, in respect of the carriage or warehousing of the goods, a rate or charge not exceeding double the highest rate or charge payable for any class of goods is paid.

122. (1) Where any person fails to pay on demand made by an authorized employee any fare, rate or charge due from him as a passenger or in respect of any goods, the rail
carrier may detain the whole or any part of such goods including the luggage of the passenger or, if the value of the goods is, in the opinion of the authorised employee insufficient to pay for the rate or charge due or if they have been removed from the possession of the rail carrier, any other goods of such person which may be in, or may thereafter come into, the possession of the rail carrier.

(2) Where any goods have been detained under subsection (1), the rail carrier may, if the fare, rate or charge due is not sooner paid, sell by public auction sufficient of such goods to produce the fare, rate or charge so owing and all the expenses of such detention and sale; and in the case of—

(a) perishable goods, such auction may take place at once;

(b) any other goods, such auction may take place on the expiration of at least fifteen days’ notice, published in one or more local newspapers, of the intended auction:

Provided that imported goods shall not be sold under this section until they have been cleared by the Kenya Revenue Authority in accordance with the relevant laws.

(3) The rail carrier may, out of the proceeds of any sale effected under subsection (2), retain a sum equal to the fare, rate or charge due and the expenses of the detention and sale and shall deliver the balance, if any, of such proceeds together with such of the goods, if any, as remain unsold to the person appearing to the rail carrier to be entitled thereto:

Provided that if such person fails, after notice so to do, to remove within a reasonable time the goods, if any, remaining unsold, the rail carrier may sell such goods and dispose of the proceeds of such sale in accordance with provisions of this section.

(4) Nothing in this section shall prejudice the right of the rail carrier to recover any such fare, rate or charge, or any part thereof, by any other lawful means.

123. (1) Where any goods in the possession of the rail carrier are not claimed by the owner or person appearing to the rail carrier to be entitled thereto, the rail carrier shall, if such owner or person is known, take all reasonable steps to cause a notice to be served upon him requiring him to remove the goods.
If—

(a) the owner of any goods in the possession of the rail carrier is not known and no person appears to be entitled thereto; or

(b) the notice referred to in subsection (1) cannot for any reason be served; or

(c) there has been a non-compliance with the provisions of any notice served under subsection (1),

the rail carrier may, within a reasonable time not being less (except in the case of perishable goods) than 90 days, sell the goods and retain the proceeds of the sale thereof:

Provided that imported goods shall not be sold under this section until they have been cleared by the Kenya Revenue Authority in accordance with the relevant laws.

Indemnity where goods claimed by two persons, etc.

124. Where—

(a) any goods, or the proceeds of the sale of any goods, are in the possession of the rail carrier and such goods or proceeds are claimed by two or more persons; or

(b) any person claiming any goods in the possession of the rail carrier does not produce valid documents showing that he is entitled to take delivery thereof,

the rail carrier may withhold delivery of the goods or proceeds until the person appearing to the rail carrier to be entitled thereto has given an indemnity to his satisfaction against the claim of any other person with respect to such goods or proceeds.

Dangerous or offensive goods, etc.

125. (1) A person shall not take with him upon any train of the rail carrier or tender to the rail carrier for carriage or warehousing any dangerous or offensive goods or any goods which are likely to cause damage to any persons or property without giving notice of the nature of such goods—

(a) in the case of goods taken by a person, to the employee in charge of the
station at which such person commences his journey; or

(b) in the case of goods tendered to the rail carrier for carriage or warehousing, to the employee to whom the goods are tendered.

(2) An authorized employee may—

(a) refuse to permit any goods to which this section applies to be taken by any person upon any train of the rail carrier;

(b) refuse to accept the goods for carriage or warehousing or accept them only under, and in accordance with, any special provisions dealing with the carriage or warehousing of any such goods;

(c) require the goods to be marked and packed in such manner as he may reasonably direct.

(3) Where an authorized employee has reason to believe that any goods to which this section applies are being carried or warehoused, or have been accepted for carriage or warehousing, in contravention of subsection (1) or (2) he may examine such goods and if, on examination, they are found to be goods to which this section applies he may order their removal from any train of, or from premises occupied by, the rail carrier.

(4) Nothing in this section shall—

(a) derogate from the provisions of any law in force relating to the possession or transport of explosives, petroleum, firearms or ammunition;

(b) apply to any goods carried by any member of any military force established for the defence of Kenya, or by any police officer, in the course of his duty.

126. (1) The quarantine of goods in transport shall be carried out in accordance with relevant regulations of the Government.

(2) If a certain kind of infectious disease which demands quarantine as stated in legal provisions is discovered in a railway station or on board a passenger train, the railway sanitation and quarantine authority shall carry out the necessary quarantine
(3) The rail carrier shall cause to be prepared and published in such manner as it may think fit—

(a) a Tariff Book containing all matters which under this Act are required to be contained therein together with such other matters as, under this Act, may be determined by the rail carrier and such other matters as the rail carrier may think fit;

(b) such other books, time-tables and documents as under this Act are required to be kept.

(2) There shall be available for public inspection at every booking office—

(a) a copy of the Tariff Book containing all amendments for the time being in force;

(b) a list specifying the fares for the carriage of passengers by the rail carrier from the place at which the list is kept to every other place to which bookings are commonly made; and

(c) a time-table of the passenger transport services operated by the rail carrier.
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<th>Section</th>
<th>Text</th>
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| **Duty to notify the Authority, Cabinet Secretary, etc. of other railway accidents or incidents.** | notify the Authority and the Cabinet Secretary of its occurrence immediately on learning of the occurrence through the quickest means available.  

(2) A train operator and a railway line operator shall in addition notify through the quickest means available the Corporation or the relevant railway line manager when its property or staff have been involved in a serious railway accident. |

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<th>Section</th>
<th>Text</th>
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<tr>
<td><strong>129. (1)</strong></td>
<td>The Corporation, a railway line manager, a train operator and a railway line operator whose property or staff have been involved in an accident or incident, other than a serious railway accident, shall notify the Authority and the Cabinet Secretary of its occurrence as soon as is reasonably practicable and in any event within three working days of its occurrence.</td>
</tr>
<tr>
<td><strong>(2)</strong></td>
<td>A train operator and a railway line operator shall in addition notify, as soon as is reasonably practicable and in any event within three working days of its occurrence, notify the Corporation or the relevant railway line manager when its property or staff have been involved in an accident or incident, other than a serious railway accident.</td>
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<tr>
<td><strong>130.</strong></td>
<td>A notice given under section 128 or 129 shall contain as much of the prescribed information relating to the accident or incident as the Corporation, the railway line manager, the train operator or the railway line operator is reasonably able to provide at the time of the notification.</td>
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<thead>
<tr>
<th>Section</th>
<th>Text</th>
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<tbody>
<tr>
<td><strong>131. (1)</strong></td>
<td>Upon the occurrence of a major railway accident, the Cabinet Secretary shall by order, direct persons appointed by him to conduct an inquiry into the matter, and report the findings of the inquiry to him in the prescribed manner and within 30 days or such other period as he may direct.</td>
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<tr>
<td><strong>(2)</strong></td>
<td>The Cabinet Secretary shall make public the accident or incident report submitted to him pursuant to subsection (1).</td>
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<tr>
<th>Section</th>
<th>Text</th>
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<tbody>
<tr>
<td><strong>132. (1)</strong></td>
<td>If the Cabinet Secretary considers that any accident or incident associated with the operation of rolling stock on a railway, other than in relation to a serious railway accident, raises, or may raise, issues of public interest relating to safe railway operations, he may, by order, direct persons appointed by him to conduct an inquiry into the matter, and report the findings of the inquiry to him in the prescribed manner</td>
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</table>
and within 30 days or such other period as he may directs.

(2) The Cabinet Secretary shall make public the accident or incident report submitted to him pursuant to subsection (1).

<table>
<thead>
<tr>
<th>Powers of the persons designated to conduct an inquiry.</th>
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<tbody>
<tr>
<td><strong>133.</strong> A person appointed to conduct an inquiry under section 131 or 132 has the powers of a person appointed as a commissioner under the Commissions of Inquiry Act, subject to any restrictions specified in the appointment by the Cabinet Secretary.</td>
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<tr>
<th>Medical examination of persons claiming compensation.</th>
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<tbody>
<tr>
<td><strong>134.</strong> Whenever any person claims compensation against the Corporation in respect of any injury alleged to be suffered by him as a result of the operations of the Corporation, any court or person having by law, or consent of the parties, authority to determine the claim may order that the person injured be examined by a medical practitioner named in the order and may also make such order with respect to the costs of the examination as may be thought.</td>
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**PART X—ESTABLISHMENT OF THE RAILWAY TRAINING INSTITUTE**

<table>
<thead>
<tr>
<th>Establishment of the railway training institute.</th>
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<tbody>
<tr>
<td><strong>135.</strong> (1) There is established an institute to be known as the Railway Training Institute (hereinafter referred to as &quot;the Institute&quot;).</td>
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</table>

(2) The Institute is a body corporate with perpetual succession, and a common seal and shall in its corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing and disposing of movable and immovable property;

(c) borrowing money;

(d) entering into contracts; and

(e) doing or performing such other things or acts for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.

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<tr>
<th>Object and purpose of the Institute.</th>
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<tr>
<td><strong>136.</strong> The object and purposes of the Institute shall be to undertake railway research, transport &amp; logistics and other business related training responsive to a dynamic market in accordance with the provisions of this Act.</td>
</tr>
</tbody>
</table>
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### Functions of the Institute.

137. (1) The Institute shall—

(a) undertake training for the railway sector;

(b) undertake rail safety training;

(c) undertake research to inform curriculum and training in the railway, transport and logistics industry;

(d) to offer consultancy in the railway, transport and logistics industry;

(e) undertake technical and vocational training;

(f) Promote equity and access to research and training in the railway, transport and logistics industry;

(g) promote use of technology and innovation in training in the railway, transport and logistics industry;

(h) establish with approval of the Board/CS, such campuses or centers for training and capacity development as are necessary and in the furtherance of railway, transport and logistics research and training;

(i) enter into association with other institutions of learning, within or outside Kenya, as the Institute may consider necessary or appropriate and in furtherance of railway, transport and logistics research and training;

(j) organize symposia, conferences, workshops and other meetings to promote the exchange of views on issues relating to railway research and training;

(k) Provide training and capacity development programmes or courses in railway, transport and logistics and award diplomas and certificates;

(l) In Consultation with the Board of the Corporation develop the curriculum in the railway, transport and logistics sector;

(m) Undertake any other responsibility as may be directed by the Cabinet Secretary;

(n) perform any other functions that are ancillary to the object and purpose for
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<table>
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<tr>
<th>Board of the Institute.</th>
<th>138. (1) The management of the Institute will vest in a Board which shall comprise of—</th>
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<tbody>
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<td></td>
<td>(a) a chairperson appointed by the President;</td>
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<td></td>
<td>(b) the Principal Secretary ministry responsible for transport;</td>
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<td></td>
<td>(c) the Principal ministry for responsible for finance;</td>
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<tr>
<td></td>
<td>(d) Director General of Technical and Vocational Education and Training authority (TVETA)</td>
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<td></td>
<td>(e) Managing Director Kenya Railways</td>
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<tr>
<td></td>
<td>(f) the Director of the Institute, who shall be the secretary;</td>
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<tr>
<td></td>
<td>(g) Three other members, not being public officers, nominated or selected through a competitive process taking into account regional balance and gender parity and appointed, by the Cabinet Secretary</td>
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<td></td>
<td>(2) The Members of the Board referred under subsection 1(b) (c) (d) and (e) may designate an officer to represent them in the Board of the Institute.</td>
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<tr>
<td></td>
<td>(3) the persons to be appointed under subsection 1(g) shall have experience in railway engineering, transport economics, education or finance.</td>
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| Powers of the Board. | 139. The Board of the Institute may enter into partnership with another body or organization within or outside Kenya as it may consider appropriate in furtherance of the object and purpose for which the Institute was established. |

| Remuneration of Board Members of the Institute. | 140. The members of the Board of the Institute shall be paid allowances determined by the Cabinet Secretary, in consultation with the Salaries and Remuneration Commission. |

| Remuneration of members of the Board of the Institute. | 141. Remuneration and expenses of chairperson and members of the Board, other than the chief executive and public officers in receipt of salary, shall be paid out of the funds of the state corporation such sitting allowances or other remuneration as the Board may, within the scales of remuneration specified from time to time by the |
(2) A Board may, within the scales specified by the Committee, refund travelling and other expenses incurred by the chairman or members of the Board in the performance of their duties.

142. (1) A person shall be qualified to be appointed as the Chairperson, if the person—

(a) holds a masters degree in the field of education, engineering, management, social sciences, economics, business or public administration, law or finance or any other fields relevant to the functions of the Institute from a university recognized in Kenya;

(b) has at least fifteen years experience in a senior position in the private or public service or as a practitioner in the railway industry;

(c) satisfies the requirements of Chapter Six of the Constitution.

143. The Chairperson and the appointed members of the Board shall serve for a term of three years, and shall be eligible for re-appointment for one further term.

144. The Chairperson or member of the Board of the Institute may vacate office if—

(a) at any time resign from office, in the case of the Chairperson by notice in writing to the President, and in any other case to the Cabinet Secretary;

(b) dies.

145. The Chairperson or member of the Board of the Institute may be removed from office, in the case of the Chairperson by the President, and in any other case by the Cabinet Secretary, if the Chairperson or member, as the case may be—

(a) has been absent from three consecutive meetings of the Board without notifying the Chairperson;

(b) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

(c) is convicted of an offence involving dishonesty or fraud;

(d) is adjudged bankrupt or enters into a composition scheme or arrangement.
(e) is incapacitated by physical or mental illness or is deemed otherwise unfit to discharge his or her duties as a member of the Board; or

(f) gross misconduct or misbehavior;

(g) otherwise fails to comply with the requirements of Chapter Six of the Constitution.

146. (1) There shall be a Director of the Institute who shall be the Principal of the Institute.

(2) The Director shall be competitively recruited by the Board of the Institute on such terms and conditions that the Board shall determine.

(3) In the exercise of his functions under this Act, the Director shall, subject to the direction of the Board of the Institute—

(a) be responsible for the day-to-day management of the Institute;

(b) manage the funds, property and affairs of the Institute;

(c) be responsible for the management of the staff of the Institute;

(d) implement the policies, programmes and objectives of the Institute;

(e) cause to be prepared for the approval of the Board of the Institute—

(i) the strategic plan and annual plan of the Institute; and

(ii) the annual budget and audited accounts of the Institute; and

(f) perform such other duties as may be assigned by the Board of the Institute.

(3) A person shall be qualified for appointment as the Director, if that person—

(a) holds a masters degree in the field of engineering, management, social sciences, economics, business or public administration, law or finance or any other fields relevant to the functions of the Corporation from a university recognized in Kenya; and

(b) has at least ten years relevant experience at senior management level in a
public or private institution.

(c) satisfies the requirements of Chapter six of the Constitution

(4) Director shall be appointed for a term of five years, which may be renewed for one further term.

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<tr>
<th>Ground for removal.</th>
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| **147.** The Board may terminate the appointment of the Director in accordance with his terms and conditions of service for—  
  (a) inability to perform the functions of the office arising out of physical or mental incapacity;  
  (b) gross misconduct or misbehavior;  
  (c) incompetence or neglect of duty; or  
  (d) any other ground that would justify removal from office under the terms and conditions of service. |

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<tr>
<th>Committees of the Board of the Institute.</th>
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<tr>
<td><strong>148.</strong> The Institute may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.</td>
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<tr>
<th>Delegation of Powers.</th>
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<td><strong>149.</strong> Subject to this Act, the Board of the Institute may, by resolution either generally or in any particular case, delegate to a committee of the Board of the Institute or to a member, officer, employee or agent of the Institute, the exercise of any of the powers or, the performance of any of the functions or duties of the Board of the Institute under this Act.</td>
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<tr>
<th>Conduct of meetings.</th>
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<td><strong>150.</strong> The conduct of the meetings of the Board of the Institute shall be in accordance with the First Schedule.</td>
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<tr>
<th>Conflict of interest.</th>
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| **151.** (1) A member of the Board of the Institute who has an interest in a matter for consideration by the Board of the Institute shall disclose, in writing, the nature of that interest and shall not participate in any deliberations of the Board of the Institute relating that matter.  
  (2) A member of the Board of the Institute who fails to disclose interest in a matter in accordance with subsection (1) shall cease to be a member of the Board of |
152. (1) The Cabinet Secretary shall, in consultation with the Board of the Institute and subject to subsection (2), appoint the Director of the Institute through a competitive process.

(2) A person shall not be qualified for the appointment as the Director under subsection (1) unless that person holds an advanced degree from a recognized university in the field of social sciences, Business Administration or transport related discipline and has at least ten years' experience in the relevant field at senior management level.

(3) A person appointed to be the Director of the Institute under subsection (1) shall hold office for a term of three years but shall be eligible for re-appointment for one further term of three years.

(4) The Director shall be the chief executive officer of the Institute.

153. (1) The Director may with the approval of the Board of the Institute appoint such officers and other staff as are necessary for the proper and efficient discharge of its functions under this Act, and upon such terms and conditions of service as the board of the Institute may in consultation with Salaries and Remuneration Commission determine.

(2) The institute shall employ such staff as it considers appropriate to enable it perform its functions and exercise its powers.

(3) The Institute may engage consultants and experts as it considers appropriate to assist it to perform its functions and exercise its powers.

154. (1) The Institute shall, in collaboration with the Corporation and other relevant lead agencies and stakeholders, establish a comprehensive railway, transport and logistics database.

(2) The database established under subsection (1) shall include relevant data produced by the Kenya National Bureau of Statistics, universities and other research institutions or as a consequence of collaborative research by the Institute with local and foreign institutions and researchers.
(3) The Institute shall, in consultation with the Corporation, the relevant lead agencies and other stakeholders, ensure that data is collected in accordance with any harmonized national standards that may be prescribed under this Act or regulations made hereunder.

(4) The Institute shall, in respect of the data and information that it holds, progressively make the data and information available and accessible, through any means, to all the stakeholders and the general public.

(5) The Cabinet Secretary may, on his or her own motion or on recommendation of the Board of the Institute, prescribe regulations to carry out the purposes of this section.

(6) The Director shall, on request, have access to the public records or documents of a lead agency in custody of a person or all establishment where, in his or her opinion, the information sought is for the purposes of obtaining the required wildlife data or completion or correction of the information already obtained.

(7) A person who fails or refuses to grant the Director access to the records or documents in accordance with subsection (1) commits an offence.

(8) The Cabinet Secretary may, on his or her own motion or on recommendation of the Board of the Institute, prescribe regulations to effectively carry out the provisions of this section.

Funds of the Institute.

155. (1) There shall be a general fund of the Institute which shall vest in the Board of the Institute and into which shall be paid —

(a) monies appropriated by Parliament for the purposes of the Institute;

(b) monies that may accrue to or vest in the Institute in the course of the performance of its functions;

(c) donations, gifts and grants made to the Institute; and

(d) monies from any other sources approved by the Cabinet Secretary for the time being responsible for matters relating to finance.

(2) There shall be paid out of the general fund of the Institute any expenditure incurred by the Institute in the exercise of its powers or the performance of its
functions under this Act.

(3) The Institute may, subject to the approval of the Cabinet Secretary for the time being responsible for matters relating finance, invest any funds not immediately required for its purposes, as it may determine.

PART XI –MISCELLANEOUS PROVISIONS

Service of notices.

156. (1) Any notice or other document required or authorized under this Act to be served on any person by the Corporation or the managing director or any employee may be served—

(a) by delivering it to that person;

(b) by leaving it at the usual or last known place of abode of that person; or

(c) by sending it by post addressed to that person at his usual or last known address.

Offences.

157. (1) Any person who unlawfully—

(a) does any act which obstructs, or might obstruct, the working of a train or vehicle of the Corporation and which endangers, or might endanger, the life of any person travelling thereon; or

(b) damages or in any way interferes with any train, vehicle, signal, points, rails, sleeper, lighthouse, buoy, mark, beacon or other property of the Corporation in such a manner as to endanger, or as might endanger, the life of any person,

(c) does any act which endangers or might endanger the life of any person travelling thereon and which is not specifically provided under this act; commits an offence and liable to imprisonment for a term not exceeding ten years.

(2) Without prejudice to the generality of subsection (1) any person who, being a member of the crew of train with prejudice to the safe operation of such train, without lawful excuse disobeys any lawful order given to him as a member of the crew, unlawfully deserts his employment upon such train shall be guilty of an offence and liable to imprisonment for a term not exceeding three years.
(3) Any person who—

(a) not being specifically authorized in that behalf or an employee, passenger or agent of an operator—

(i) Without justifiable cause is found during the hours of darkness on any premises occupied by an operator;

(ii) is found in any area designated by an operator as dangerous by publication of a notice to that effect; or

(iii) refuses to leave premises occupied by an operator, or any train or vehicle thereof after being lawfully warned to do so by any employee or police officer;

(b) being on any premises occupied by an operator or upon any train or vehicle of the an operator —

(i) refuses when called upon by an employee or police officer to give his name and address or gives a false name or address for the purpose of avoiding prosecution;

(ii) is in a state of intoxication or behaves in a violent; or

(iii) offensive manner to the annoyance of any other person;

(iv) discharges any firearm or does anything which may cause injury to any person on such premises or upon such train or vehicle;

(v) commits any nuisance or act of indecency or uses profane, obscene, indecent or abusive language;

(vi) without lawful excuse contravenes any direction lawfully given by any employee under this Act;

(vii) save with the express permission of the managing director hawks, sells or exposes for sale any article or touts, applies for or solicits custom of any description; or

(viii) smokes in any part of such premises, train or vehicle bearing a notice that smoking is not permitted in that part;
(c) writes, draws or affixes any profane, obscene, indecent or abusive word, matter, representation or character upon any premises occupied by an operator or upon any train or vehicle of an operator;

(d) defaces the writing on any board or any notice authorized to be maintained upon any premises occupied by an operator or upon any train or vehicle of the an operator;

(e) damages or without lawful excuse interferes with any property of an operator;

(f) without lawful excuse does any act which obstructs, or is likely to obstruct, the free movement of train or rolling stock or therein;

(g) without lawful excuse enters or leaves any train or vehicle of an operator while it is in motion or elsewhere than at the place appointed by an operator for passengers to enter or leave or opens any outer door of any train while it is in motion;

(h) being a driver or conductor of any vehicle, disobeys while upon premises occupied by an operator any reasonable directions given to him in respect of such vehicle by any police officer or, not being an employee of the Corporation, disobeys any such direction given by an authorized employee;

(i) in the absence of a gate-keeper, omits to shut and fasten, if any form of fastener is provided, any gate on any railway belonging to an operator as soon as such person and any animal, vehicle or other thing under his charge has passed through the gate;

(j) knowing, or having reason to believe, that a train is approaching, or without having exercised due care to ascertain whether a train is approaching, opens any gate, chain or bar set up on either side of a railway or drives any animal, vehicle or other thing onto or across such railway;

(k) uses any object including electronic gadgets (such as cameras, phones or earphones) or equipment on a station or railway infrastructure that is likely to interfere with the safety of passengers;
(l) permits or allows any animal to stay on any premises occupied by an operator and properly fenced;

(m) fails to deliver at the earliest possible opportunity to any authorized employee any property which there is reason to believe has been lost or forgotten and is found on any premises, train or vehicle of an operator;

(n) wilfully obstructs or impedes an employee of an operator in the discharge of his duties;

(o) gives or offers to any employee any money or anything of value for the purpose of avoiding payment of any sum due to an operator;

(p) unlawfully removes any property of an operator;

(q) being an employee of an operator receives from any passenger or from any person delivering goods for an operator, any amount of money and—

(i) in the case of any amount of money received as a passenger fare, fails to issue a ticket immediately in respect of such amount of money; and

(ii) in any other case, fails within reasonable time not exceeding half an hour to issue a receipt in respect of such amount of money;

(r) without the permission of an authorized employee travels in or upon any part of a train or vehicle of an operator other than the part ordinarily provided for passengers during travel; or

(s) contravenes any direction given by a health officer under section 63 or refuses to answer any question put to him under the provisions of that section or gives in reply thereto any information which is false in a material particular,

commits an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or to both.

(4) Any person who—

(a) travels on a train or vehicle of an operator without a valid ticket or free
pass with intent to avoid payment of any fare for which he is liable;

(b) having a valid ticket or free pass for a certain distance, knowingly travels on a train or vehicle of an operator beyond that distance with intent to avoid payment of the fare for the additional distance;

(c) travels on a train or vehicle of an operator by a higher class than the valid ticket or free pass which he holds entitles him to travel with intent to avoid payment of any additional fare;

(d) Willfully refuses to pay on demand the fare and excess charge which he is liable to pay under section 115; or

(e) travels on a train or vehicle of an operator with a ticket or free pass, or any portion thereof, purchased or obtained by him from any person other than an authorized employee,

Commits an offence and shall be liable, to a fine not exceeding 10 thousand shillings or to imprisonment for a term not exceeding six months or to both.

(5) Any person who, being a passenger on a train or vehicle of an operator:

(a) enters any part thereof reserved for use of another person, or already containing the maximum number of persons authorized for that part, and refuses to leave that part after being required to do so by an authorized employee;

(b) resists or obstructs the lawful entry of a person into any part thereof not already containing the maximum number of persons authorized for that part;

(c) refuses or fails to obey the requirement of an authorized employee made under section 120

(d) knowingly enters or refuses to leave any part thereof not intended for the use of passengers;

(e) without reasonable cause uses or interferes with any means of communication provided thereon for communication between passengers and any employee therein; or
(f) knowingly enters, or refuses to leave after being required so to do, any part thereof provided for the exclusive use of designated persons.

(g) surfs on a train while in motion.

commits an offence and is liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

(6) Any person who—

(a) not being an authorized employee or agent of an operator, sells or parts with any ticket or free pass, or any portion thereof, in order to enable any other person to travel therewith on a train or vehicle;

(b) purchases or obtains any ticket or free pass, or any portion thereof, from any person other than an authorized employee or agent of an operator; or

(c) wilfully alters, obliterates or defaces any ticket or free pass with intent to render any material portion thereof illegible,

commits an offence and is liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding one year or to both.

(7) Any person who—

(a) obtains by false pretences or other fraudulent means any ticket or free pass issued by an operator;

(b) with intent to defraud, counterfeits, forges or alters any such ticket or free pass; or

(c) with intent to defraud, utters or in any way publishes any such forged, counterfeited or altered ticket or free pass,

commits an offence and liable to imprisonment for a term not exceeding three years and shall, in addition, be liable to a penalty equal to the fare due in respect of any journey travelled by means of any such ticket or free pass together with the excess charge which on demand he is liable to pay under section 113.

(8) Any person who makes, either knowingly or recklessly, any statement which
is false in any material particular in any return, claim or other document which is required or authorized to be made for the purposes of the Corporation under this Act commits an offence and liable to a fine not exceeding three thousand shillings or to imprisonment not exceeding three months or to both.

(9) Any person who is convicted of an offence under this section shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so taken upon the train or vehicle or delivered to the Corporation for carriage or warehousing; and the court which convicts such offender may order him to pay the amount of any such loss, injury or damage to the person suffering it and in default of such payment may impose a further term of imprisonment not exceeding six months.

(10) Any employee of the Corporation who, while on duty, endangers the safety of any person—

(a) by contravening any of the provisions of this Act;

(b) by contravening any lawful order, direction or rule given to such employee or made in respect of his service;

(c) by being under the influence of alcohol or drugs; or

(d) by any rash or negligent act,

commits an offence and liable to imprisonment for a term not exceeding three years.

(12) Any employee of the Corporation, who with intent to defraud, demands, solicits or receives from any passenger, or from any person delivering goods to the Corporation for carriage or warehousing or from any person making use of the facilities provided by the Corporation, any greater or lesser amount than he should demand or receive, or any other thing of value, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

(13) A person who—

(a) without lawful excuse, contravenes any lawful direction issued by any member, officer, employee or agent of the Authority in exercise of the
powers or the performance of the functions of the Authority under this Act; or

(b) wilfully obstructs any member, officer, employee or agent of the Authority in the discharge of his lawful duties, commits an offence and shall be liable, on conviction, to a fine of at least one hundred thousand shillings, or to imprisonment for a term not exceeding one year.

(14) Where the safe operation of any transport service of the Corporation would be endangered by the immediate arrest, whether with or without a warrant, of any employee thereof, the police officer whose duty it is to make the arrest shall—

(a) request the head of the department of the employee to relieve the employee from his duties as soon as practicable; and

(b) refrain from arresting the employee until he is so relieved and shall, until he is so relieved, take all necessary steps to ensure that the employee does not escape.

(15) Where any request is made to a head of a department under this section, it shall be his duty to relieve the employee in respect of whom the request is made with the least possible delay.

(16) Any person who commits any offence against this Act, other than an offence mentioned in subsection (1), may be arrested without warrant by any authorized employee of the Corporation or police officer if—

(a) there is reason to believe that such person will abscond; or

(b) he refuses on demand to give his name and address; or

(c) there is reason to believe that the name or address given by him is incorrect, and shall thereupon, with the least possible delay, be taken before a magistrate having jurisdiction to try him or commit him for trial:

Provided that, save where there is reason to believe that such person will abscond, he shall, if his true name and address are ascertained, be released on his executing a bond without sureties for his appearance before a magistrate when required.

(17) Any person who, under this section, is arrested or required to leave any
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premises occupied by the Corporation or any train or vehicle thereof shall not be entitled to the return of any fare which he may have paid.

(18) Any person charged with any offence under this Act may be proceeded against, tried and punished in any place in which he may be in custody for that offence as if the offence had been committed in such place; and the offence shall for all purposes incidental to, or consequential upon, the prosecution, trial or punishment thereof be deemed to have been committed in that place:

Provided that nothing herein contained shall preclude the prosecution, trial and punishment of such person in any place in which, but for the provisions of this section, such person might have been prosecuted, tried and punished.

(19) An offence committed under this Act shall be a cognizable offence by the police.

(20) Where any penalty imposed under this section is recovered, the amount thereof shall be paid to the Corporation.

(21) Nothing in this section shall prejudice the right of the Corporation to recover any amounts due from the offender by any other lawful means.

Additional offences.

158. (1) Any person who;

(1) carries any dangerous article into a railway station or on board a train or has consigned for shipment any dangerous article under a name of a non-dangerous article thus likely to cause an accident, carries dynamite or detonator or who illegally carries firearms, bullets or controlled knives into a railway station or on board a train shall be guilty of an offence.

(2) intentionally damages or destroys or causes to move or shift any railway signaling installation, or places on the railway track obstacle(s) that might lead to the overturning of a train shall be guilty of an offence.

(3) steals spare part(s) or component(s) of a train operation facility installed on a railway line or equipment or material(s) attached to a railway line, thus endangering safe operation of the train but without causing any serious consequences, shall be investigated for criminal responsibility in accordance with the provisions regarding the
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crime of sabotaging traffic facility stipulated in Article 108 of the Criminal Law; any person who acts in the aforesaid manner causing serious consequences shall be guilty of an offence.

(4) A person who is guilty of an offence under this section shall be liable to life imprisonment.

(5) Where a person is convicted of an offence of damaging, injuring or removing rail material, the rail material shall be forfeited to the owner. The court may in addition to any other ruling order—

(a) such person shall pay to the railway owner, by way of compensation, a sum equal to the determined value of the rail material so damaged, injured or removed and where the value cannot be estimated, five hundred thousand shillings for each offence:

(b) if it is proved to the satisfaction of the court that the person so convicted is the agent or employee of another person, that other person to pay by way of compensation to the rail owner, the value of the rail material, unless after hearing that other person, the court is satisfied that the offence was not due to his negligence or default;

(c) the vehicles, tools or implements used in the commission of the offence be forfeited to the rail owner: Provided that the value of the rail material shall be either the commercial value of the railway material or the cost of restoring the damage caused to rail as a result of the offence committed, whichever is higher.

(8) A person who encroaches on railway land shall be guilty of an offence and shall be liable to a fine not exceeding five hundred thousand or imprisonment for 3 years and in addition the infrastructure owner may demolish the structures after giving sufficient notice.

159. This Act or sections thereof shall come into force on such day or days appointed by the Cabinet Secretary for the time being responsible for railways by notice published in the Gazette.

160. The Kenya Railways Corporation Act (Cap. 397) is hereby repealed.

161. (1) A person operating rolling stock on a railway on the day of the coming into force of this Act shall be entitled to continue with the operation for a period of twelve
months before being bound by section 49 or 50, section 53 and 56.

(2) The Corporation shall take over and assume all the obligations, debts, liabilities, civil suits of the former Kenya Railways Corporation.

(3) The Corporation shall take over all contracts, employees, assets and other property, movable and immovable, of the former Kenya Railways Corporation.

162. (1) The Cabinet Secretary may make Regulations necessary or convenient for the proper administration and implementation of this Act.

(2) Without prejudice to the generality of the foregoing, the Cabinet Secretary may make Regulations prescribing—

(a) the form of an application for a railway operating licence for the purpose of section 71;

(b) the fee to accompany the application for a railway operating licence for the purpose of section 71 including conditions for grant of such licence, renewal, suspension or revocation;

(a) the criteria for the appointment of the members of the board of the Corporation;

(b) the liability insurance coverage requirements for the purpose of section 71

(c) the financial fitness requirements for the purpose of section 71(2)(d);

(d) the professional competence requirements for the purpose of section 71(2)(e);

(e) the fees payable by the holder of a railway operating licence or railway line operating licence for the purpose of section 71 and section 76;

(f) the conditions and amounts by which a rail carrier may limit its liability under this Act for the purpose of section 110;

(g) procedure by which the Authority shall certify—

(i) infrastructure and rolling stock;
(ii) personnel undertaking safety functions for railways; and

(iii) railway training centres, and the safety standards and requirements that must be met by the relevant applicant for the purpose of section 65;

(h) the information to be provided in the notice given under section 128 or 129; and

(i) the principal content of an accident and incident investigation report to be submitted to the Cabinet Secretary under section 130 and

(j) Any other regulations relevant to the furtherance of this Act including safety, construction, licenses, training tariffs, fees, penalties etc.

163. The written laws specified in the first column of the Fourth Schedule are amended, in the provisions specified in the second column of the Schedule, in the manner respectively specified in the third column of the Schedule.

**FIRST SCHEDULE**

*(Section 4)*

**Tenure of office**

1. The chairman and the directors appointed under paragraph (f) of section 4 shall, subject to the provisions of this Schedule, hold office for such period not exceeding three years and on such terms as may be determined in the instruments of their appointment, and shall be eligible for reappointment.

**Vacation of office**

2. Each director mentioned in the preceding paragraph may—

   (a) resign his office by notice to the Minister in writing at any time;

   (b) be removed from office by the Minister in writing if he—

   (i) has been absent from two consecutive meetings of the Board without permission of the Board; or

   (ii) is incapacitated by prolonged physical or mental illness; or
Deputies

3. Each of the directors mentioned in paragraphs (c), (d) and (e) of section 4 may, from time to time, depute in writing an officer of his Ministry or Authority to attend meetings of the Board in his place and the officer so deputed shall at such meetings have the same powers as his principal.

Meetings

4. The Board shall meet for the despatch of business at such times and places as it shall appoint, or failing any such appointment, as the chairman shall appoint:

Provided that the Board shall meet not less than six times in any financial year.

Notice of meetings

5. The chairman or any three directors may, by not less than twenty-four hours written notice to all other directors, summon a special meeting of the Board at the headquarters of the Corporation at any time.

Special meetings

6. Except where a shorter period is appointed under paragraphs 4 or 5, notice of the date, time and place of each meeting shall be given in writing at least five clear days beforehand to every director at such address in Kenya as he shall have notified to the Corporation from time to time:

Provided that the failure of any director to receive such notice shall not invalidate any proceedings.

Quorum

7. The quorum necessary for the transaction of business by the Board shall be five.

Chairman

8. The chairman shall preside at meetings of the Board:

Provided that if he is not present at the start or at any time during a meeting, the directors present, if a quorum, may choose one of their number, other than the
managing director, to act as chairman during the chairman’s absence from that meeting.

**Voting**

9. Questions arising at meetings shall be decided by a majority of the votes of the directors present and voting:

Provided that in the case of any equality of votes, the chairman of the meeting shall have a second or casting vote.

**Minutes**

10. The Board shall cause minutes to be kept of all resolutions and proceedings at each meeting and of the directors present thereat.

**Other procedures**

11. Subject to this Schedule, the Board may determine its own procedure, and the procedure for any committee of the Board and for the attendance of other persons at its meetings, and may make standing orders in respect thereof.

**Disclosure of interest**

12. (1) If a director is directly or indirectly interested in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or other matter, or be counted in the quorum of the meeting during the consideration of that matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

**Common seal**

13. The affixing of the common seal of the Corporation shall be authenticated by the signatures of the chairman or some other director authorised generally or specially by the Board to act for the purpose, and of an employee of the Corporation authorised
generally or specially by the Board to act for the purpose.

**Contracts and instruments**

14. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Corporation by any person generally or specially authorised by it for that purpose.

**Proof of documents**

15. Any document purporting to be a document duly executed or issued under the seal of the Corporation or on behalf of the Corporation shall be received in evidence and be deemed to be a document so executed or issued without further proof unless the contrary is shown.

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**SECOND SCHEDULE**

**Section 67**

**SERVICES TO BE OFFERED BY THE CORPORATION TO TRAIN OPERATORS**

1. The minimum access package shall comprise:
   
   (a) handling of requests for infrastructure capacity;
   
   (b) the right to use the capacity which is granted;
   
   (c) use of running track points and junctions;
   
   (d) train control including signaling, regulation, dispatching and the communication and provision of information on train movement;
   
   (e) all other information required to implement or operate the service for which capacity has been granted.

2. Track access to services facilities and supply of services shall comprise:
   
   (a) use of electrical supply equipment for traction current, where available;
   
   (b) refuelling facilities;
(c) passenger stations, their buildings and other facilities;

(d) freight terminals;

(e) marshalling yards;

(f) train formation facilities;

(g) storage sidings;

(h) maintenance and other technical facilities.

3. Additional services may comprise:

(a) traction current;

(b) supply of fuel, shunting, and all other services provided at the access services facilities mentioned above;

(c) tailor-made contracts for:

   (i) control of transport of dangerous goods,

   (ii) assistance in running abnormal trains.

4. Ancillary services may comprise:

(a) access to telecommunication network;

(b) provision of supplementary information;

(c) technical inspection of rolling stock.

THIRD SCHEDULE

SAFETY MANAGEMENT SYSTEM

1. Requirements on the safety management system

The safety management system shall—

(a) describe the distribution of responsibilities, within the operation, for the safety management system;

(b) show how control of the safety management system by the management on different levels is secured;
(c) show how persons carrying out work or voluntary work directly in relation to the operation and their representatives on all levels are involved with the safety management system; and

(d) show how continuous improvement of the safety management system is ensured.

2. Basic elements of the safety management system

The basic elements of a safety management system are—

(a) a statement of the safety policy which has been approved by the chief executive and communicated to all persons carrying out work or voluntary work directly in relation to the operation;

(b) qualitative and quantitative targets for the maintenance and enhancement of safety and plans and procedures for reaching those targets;

(c) in relation (i) to the Kenya Railway Corporation network, this paragraph (c) shall provide as follows:

procedures to meet relevant technical and operational standards or other requirements as set out in—

(A) safety rules; and

(B) decisions of the Authority addressed to the train operator in question,

and procedures to ensure compliance with the requirements listed in this paragraph throughout the life-cycle of any relevant equipment or operation which is subject to the requirement in question.

(ii) in relation to railway lines, this paragraph (c) shall provide as follows:

procedures—

(A) to meet relevant technical specifications; and

(B) relating to operations or maintenance,

insofar as they relate to the safety of persons, and procedures for ensuring that the procedures in sub-paragraphs (i) and (ii) are followed throughout the life-cycle of any
relevant equipment or operation;

(d) procedures and methods for carrying out risk evaluation and implementing risk control measures when—

(i) there is a change in the way in which the operation in question is carried out; or

(ii) new material is used in the operation in question, which gives rise to new risks in relation to any infrastructure or the operation being carried out;

(e) provision of programmes for training of persons carrying out work or voluntary work directly in relation to the operation and systems to ensure that the competence of such persons is maintained and that they carry out tasks accordingly;

(f) arrangements for the provision of sufficient information relevant to safety—

(i) within the operation in question; and

(ii) between the operator in question and any other transport operator or an applicant for a safety certificate or a safety authorisation who carries out or who intends to carry out operations on the same infrastructure;

(g) procedures and formats for the documentation of safety information;

(h) procedures to control the lay out of, and changes to, vital safety information;

(i) procedures to ensure that accidents, incidents, near misses and other dangerous occurrences are reported, investigated and analyzed and that necessary preventative measures are taken;

(j) provision of plans for action, alerts and information in the case of an emergency which are to be agreed with any public body, including the emergency services, that may be involved in such an emergency; and

(k) provisions for recurrent internal auditing of the safety management system.
### APPLICATION FOR A SAFETY CERTIFICATE

**PART 1**

**INFORMATION TO BE INCLUDED FOR A KENYA RAILWAY CORPORATION NETWORK APPLICATION**

1. particulars of the type and extent of the operation in respect of which the application is made; and

2. either—
   (a) a copy of a current certificate issued to the applicant by the Authority; or
   (b) particulars of how the safety management system of the applicant meets the requirements.

3. information on the safety rules and an explanation of how compliance with these safety rules is ensured by the safety management system;

4. information on the different types of work being carried out by persons directly in relation to the operation including evidence of how the applicant ensures that when such persons are carrying out such work they are........

5. information on the different types of rolling stock used for the operation in question including evidence that they meet any relevant safety rules.

**PART 2**

**INFORMATION TO BE INCLUDED FOR A RAILWAY LINE APPLICATION**

6. Particulars of the type and extent of the operation in respect of which the application is made.

7. Particulars of how the safety management system of the applicant meets the requirements set out in section 51.

8. Information on the—
(a) relevant safety rules which are applicable to the operation; and

(b) technical specifications and procedures relating to operations and maintenance that are relevant to the safety of the transport system which the applicant proposes to follow,

and an explanation of how compliance with these requirements is ensured by the safety management system.

9. Information on the different types of work or voluntary work being carried out by persons directly in relation to the operation including evidence of how the applicant ensures that when such persons are carrying out work or voluntary work in relation to the operation that they are doing so in accordance with relevant requirements of the relevant statutory provisions referred to in paragraph 8(a).

10. Information on the different types of rolling stock used for the operation including evidence that they meet relevant requirements of the relevant statutory provisions referred to in paragraph 8(a).

FIFTH SCHEDULE

AMENDMENTS

<table>
<thead>
<tr>
<th>Written law</th>
<th>Provision</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Transport and Safety Authority Act, 2012 (Act No. 33 of 2012)</td>
<td>s.2(1)</td>
<td>Renumber as section 2.</td>
</tr>
<tr>
<td></td>
<td>s.2(2)</td>
<td>Delete.</td>
</tr>
<tr>
<td></td>
<td>s.4(1)(a)</td>
<td>Insert the words &quot;and rail&quot; immediately after the word &quot;road&quot;.</td>
</tr>
<tr>
<td></td>
<td>s.4(1)(b)</td>
<td>Insert the words &quot;and rail&quot; immediately after the word &quot;road&quot;.</td>
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<tr>
<td></td>
<td>s.4(1)(c)</td>
<td>Insert the words &quot;and rail&quot; immediately after the word &quot;road&quot;.</td>
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<tr>
<td></td>
<td>s.4(1)(d)</td>
<td>Insert the words &quot;and rail&quot; immediately after</td>
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<tr>
<td>Section</td>
<td>Amendment</td>
<td></td>
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<tr>
<td>s.4(2)(a)</td>
<td>Insert the words &quot;and train operators&quot; immediately after the word &quot;vehicles&quot;.</td>
<td></td>
</tr>
<tr>
<td>s.4(2)(b)</td>
<td>Insert the words &quot;and rolling stock&quot; immediately after the word &quot;vehicle&quot;.</td>
<td></td>
</tr>
<tr>
<td>s.4(2)(c)</td>
<td>Insert the words &quot;and railways&quot; immediately after the word &quot;vehicles&quot;.</td>
<td></td>
</tr>
<tr>
<td>s.4(2)(d)</td>
<td>Insert the word &quot;the&quot; immediately after the word &quot;to&quot; and the words &quot;and rail&quot; immediately after the word &quot;road&quot;.</td>
<td></td>
</tr>
<tr>
<td>s.4(2)(e)</td>
<td>Insert the words &quot;and rail&quot; immediately after the word &quot;road&quot; and the words &quot;and standards&quot; immediately after the word &quot;strategies&quot;.</td>
<td></td>
</tr>
<tr>
<td>s.4(2)(f)</td>
<td>Insert the words &quot;and rail&quot; immediately after the word &quot;road&quot;.</td>
<td></td>
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<tr>
<td>s.4(2)(g)</td>
<td>Insert the words &quot;and rail&quot; immediately after the word &quot;road&quot;.</td>
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<tr>
<td>s.4(2)(h)</td>
<td>Insert the words &quot;and rail&quot; immediately after the word &quot;traffic&quot;.</td>
<td></td>
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<tr>
<td>s.4(2)(k)</td>
<td>Insert the words &quot;and rail&quot; immediately after the word &quot;road&quot;.</td>
<td></td>
</tr>
<tr>
<td>s.6(1)</td>
<td>Replace with: “The management of the Authority shall vest in a Board which shall consist of— (a) a chairperson, not being an employee of the Authority, appointed by the President; (b) two persons, not being employees of the Authority, to represent government</td>
<td></td>
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</tbody>
</table>
The Railways Bill, 2019

<table>
<thead>
<tr>
<th>s.6(4)</th>
<th>Delete.</th>
</tr>
</thead>
<tbody>
<tr>
<td>s.44</td>
<td>Insert immediately after s. 44 the following title and provisions:</td>
</tr>
<tr>
<td></td>
<td>“PART IVA – RAILWAYS PROVISIONS”</td>
</tr>
<tr>
<td></td>
<td><strong>44A. Establishment of railways directorates</strong></td>
</tr>
<tr>
<td></td>
<td>(1) The Authority shall establish the following two directorates—</td>
</tr>
<tr>
<td></td>
<td>(a) a railways economic directorate; and</td>
</tr>
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<td></td>
<td>(b) a railway safety directorate.</td>
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<td></td>
<td>(2) Each of these two directorates shall be headed by a director appointed by the Board.</td>
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<td></td>
<td><strong>44B. Functions of the railways economic directorate</strong></td>
</tr>
<tr>
<td></td>
<td>The railways economic directorate shall be responsible for administering Part II of the <em>Railways Act</em> on behalf of the</td>
</tr>
</tbody>
</table>
44C. **Functions of the railways safety directorate**

The railways safety directorate shall be responsible for administering Part III of the *Railways Act* on behalf of the Authority.

44D. **Railways inspectors**

(1) The Board shall, by notice in the Gazette, appoint duly qualified persons whether public officer or otherwise, whether by name or by title of office, to be railways inspectors of the Authority for such jurisdiction units or railways (or portion thereof) as shall be specified in the notice in the Gazette appointing them.

(2) A railways inspector shall—

(a) monitor compliance with the licensing and safety requirements standards established under the *Railways Act*; and

(b) perform such other functions as may be required under the *Railways Act* or under the notice in the Gazette appointing him.”
<table>
<thead>
<tr>
<th>Section</th>
<th>Notes</th>
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<tbody>
<tr>
<td>s.46(1)</td>
<td><strong>[Note: In its Draft Final Report of May 3, 2017, the Consultant had recommended (at p. 58) that: “Section 46(1) (National Transport and Safety Levy) will need to be amended to include a rail-related component of the levy.” In its comments of June 12, 2017, NTSA noted however that: “Sec 46(1)(a) empowers the Authority to impose a levy of any service it renders and therefore there is no need for amendment. However it is important to note that the services of the Authority in relation to rail are more regulatory and not provision of service. Therefore the proposed amendment and existing section shall not in reality result in revenue from rail.” The comments of NTSA are somewhat self-contradictory. We suggest MOTIHUD revisit the issue with NTSA. The Ministry of Finance should probably also be involved in the discussion.]</strong></td>
</tr>
<tr>
<td>s.47(1)(a)</td>
<td>Insert the words &quot;and rail&quot; immediately after the word &quot;road&quot;.</td>
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<tr>
<td>s.47(1)(b)</td>
<td>Insert the words &quot;and rail&quot; immediately after the word &quot;road&quot;.</td>
</tr>
<tr>
<td>s.47(1)(c)</td>
<td>Insert the words &quot;and rail&quot; immediately after the word &quot;road&quot; and the words &quot;and standards&quot; immediately after the word &quot;strategies&quot;.</td>
</tr>
<tr>
<td>First Schedule</td>
<td>Insert the following additional Act to the list: “The Railways Act”</td>
</tr>
<tr>
<td>Trespass Act (Cap. 294)</td>
<td>s.2, definition of “occupier”</td>
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<td></td>
<td>s.2,</td>
</tr>
<tr>
<td>definition of “railway land”</td>
<td>operated by East African Railways and Harbours Administration” after the word “railway”.</td>
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</tbody>
</table>