

**CHAPTER 13:09**

**RAILWAYS ACT**

*Acts 41/1972, 39/1973 (s. 53), 42/1976 (s. 23), 15/1975 (s. 57), 41/1976 (s. 139), 42/1976 (s. 23), 41/1978 (s. 23), 15/1981, 29/1981, 20/1982, 8/1988 (s. 164), 29/1990, 2/1992, 24/1995 (s. 321), 19/1997, 22/2001, 3/2009, 1/2011. S.Is. 566/1979, 236/1980*

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**AN ACT to provide for the continuation of the Rhodesia Railways as the National Railways of Zimbabwe; to establish a board to control its operations and to provide for its functions, powers and duties; to provide for the provision, operation and maintenance by the National Railways of Zimbabwe of rail, road and inland water transport and pipelines for the conveyance of goods and other related services within and for Zimbabwe and Botswana; to provide for the functions, powers, duties and procedure of the Rhodesia Railways and the board of management referred to in the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963, of the United Kingdom; and to provide for matters incidental to or connected with the fore-going.**

[Date of commencement: 1st April, 1973.]

## PART I

### PRELIMINARY

#### **1 Short title**

This Act may be cited as the Railways Act [*Chapter 13:09*].

#### **2 Interpretation**

In this Act—

“alternate member” means a person appointed as an alternate to an appointed member in terms of subsection (3) of section *five*;

“appointed member” means a member of the Board other than the General Manager;

“area of operation”, in relation to the Railways, means Zimbabwe and any country outside Zimbabwe in which the Railways may be required or permitted under any enactment, treaty or agreement, to perform any function;

[Definition inserted by section 2 of Act 19 of 1997]

“Board” means the Board established by section *four*;

“direct costs” means the full variable and administrative costs directly incurred by the Railways in the operation of its transport services, and includes—

- (a) running costs; and
- (b) the costs of maintaining the railway, rolling stock and equipment;

[Definition inserted by section 2 of Act 19 of 1997]

“Former Undertaking” means the Rhodesia Railways referred to in the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963, of the United Kingdom;

“General Manager” means the general manager appointed in terms of subsection (1) of section *twenty*;

“goods” means anything, whether solid, liquid or gas, capable of being carried on a railway or by road;

[Definition amended by section 2 of Act 19 of 1997]

“member” means a member of the Board;

“Minister” means the Minister of Transport and Energy or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“railway premises” means land or property owned, controlled or occupied by the Railways other than land or property which is used solely for residential purposes;

“Railways” means the National Railways of Zimbabwe referred to in section *three*;

“repealed legislation” means the legislation specified in the Third Schedule.

“territories” ....

[Definition of repealed by section 2 of Act 19 of 1997]

## **PART II**

### **NATIONAL RAILWAYS OF ZIMBABWE AND BOARD**

#### **3 National Railways of Zimbabwe**

The Rhodesia Railways, established in terms of the Transport Services (Railways and Airways) (Transition) Act, 1967 (No. 15 of 1967), shall continue to be a body corporate to be known as National Railways of Zimbabwe, and shall be capable of suing and being sued in its corporate name and, subject to this Act, of performing all such acts as a body corporate may by law perform.

#### **4 Establishment of National Railways of Zimbabwe Board**

The operations of the Railways shall, subject to this Act, be controlled by a board, to be known as the National Railways of Zimbabwe Board, appointed in terms of this Part.

#### **5 Constitution of Board**

(1) The Board shall consist of not less than six and not more than eight members of whom—

- (a) one shall be the General Manager; and
- (b) the others shall be appointed by the Minister after consultation and in accordance with any directions the President may give him.

(2) The Minister shall designate an appointed member as chairman of the Board and another appointed member as deputy chairman of the Board and the deputy chairman shall exercise the functions and powers and perform the duties of the chairman during any period when the chairman is unable to do so.

(3) The Minister may appoint any person to the Board as an alternate to an appointed member and such person—

- (a) shall act as a member only when a member to whom he is alternate is unable to exercise the functions on the Board by reason of illness, absence from Zimbabwe, suspension from office or other cause;
- (b) when acting as a member shall, subject to the conditions applicable to the appointed member, exercise the functions and powers and perform the duties of a member to whom he is alternate:

Provided that an alternate to the member who has been designated as chairman or deputy chairman of the Board shall not exercise the functions and powers or perform the duties of chairman or deputy chairman, as the case may be.

**6 Conditions of office of appointed members**

- (1) An appointed member shall, subject to this Part, hold office for such period, not exceeding three years, as the Minister may fix on his appointment.
- (2) Subject to section *twelve*, an appointed member shall hold office on such conditions as the Minister may in his case fix.
- (3) A retiring member shall be eligible for reappointment as a member.

**7 Disqualification for appointment as member**

The Minister shall not appoint a person as a member and no person shall be qualified to hold office as an appointed member who—

- (a) is not a citizen of Zimbabwe permanently resident in Zimbabwe; or
- (b) is a member of Parliament; or
- (c) is, or is married to a person who is, engaged in any activity connected with a business which, in the opinion of the Minister, is likely to interfere with the impartial discharge by that person of the duties of the office of member; or
- (d) has, in terms of the law in force in any country—
  - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
  - (ii) made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside; or
- (e) has, within the period of five years immediately preceding the date of his proposed appointment, been convicted—
  - (i) within Zimbabwe of a criminal offence; or
  - (ii) outside Zimbabwe of an offence, by whatever name called, which, if committed within Zimbabwe, would have been a criminal offence; and sentenced by a court to imprisonment without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon.

**8 Vacation of office by appointed member**

An appointed member shall vacate his office and his office shall become vacant—

- (a) one month after the date he gives notice in writing to the Minister of his intention to resign his office or after the expiration of such shorter period as he and the Minister may agree; or
- (b) thirty days after the date he is sentenced by a court to imprisonment referred to in paragraph (e) of section *seven* after conviction of an offence referred to in that paragraph:

Provided that, if, during the said period of thirty days, an application for a free pardon is made or an appeal is filed, the question whether the member is to vacate his office shall not be determined until the final disposal of such application or appeal, whereupon the member shall forthwith vacate his office and his office shall become vacant unless he is granted a free pardon, his conviction is set aside or a punishment other than imprisonment is substituted; or

- (c) if he becomes disqualified in terms of paragraph (a), (b), (c) or (d) of section *seven* to hold office as a member; or
- (d) if he is required in terms of section *nine* to vacate his office; or
- (e) if he is absent without the permission of the Board from three consecutive meetings of the Board of which he has had notice.

**9 Minister may require appointed member to vacate office or suspend him**

- (1) The Minister may require an appointed member to vacate his office if the Minister is satisfied that the member—
  - (a) has been guilty of improper conduct as a member; or
  - (b) has failed to comply with the conditions of his office fixed by the Minister in terms of subsection (2) of section *six*; or
  - (c) is mentally or physically incapable of efficiently performing his duties as a member.
- (2) The Minister—

- (a) may suspend from office an appointed member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed; and
  - (b) shall suspend from office an appointed member who has been sentenced by a court to imprisonment after conviction of an offence referred to in paragraph (e) of section *seven* pending determination of the question whether he is to vacate his office;
- and whilst that appointed member is so suspended he shall not carry out any duties or be entitled to any remuneration as an appointed member.

#### **10 Filling of vacancies**

On the death of, or the vacation of office by, an appointed member, the Minister may appoint a person to fill the vacancy until the expiration of the period during which the member would, but for his death or the vacation of his office, have continued in office.

#### **11 Meetings and procedure of Board**

(1) The Board shall hold its first meeting on such date and at such place as the Minister may fix and thereafter the Board shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit.

(2) The chairman of the Board may himself at any time and shall, at the request in writing of not less than two members, convene a meeting of the Board, which meeting in the latter case shall be convened for a date not less than seven days or more than thirty days after receipt of such request.

(3) If, at a meeting of the Board, the chairman and the deputy chairman are both absent, the members present may elect one of their number to preside at that meeting as chairman.

(4) A majority of the members shall form a quorum at a meeting of the Board.

(5) All acts, matters or things authorized or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.

(6) At all meetings of the Board each member present shall have one vote on a question before the Board and, in the event of an equality of votes, the chairman shall have, in addition to a deliberative vote, a casting vote.

(7) Any proposal circulated among all members and agreed to in writing by a majority of all members shall be of the same force and effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that if a member requires that such a proposal shall be placed before a meeting of the Board, the provisions of this subsection shall not apply to such proposal.

#### **12 Remuneration and expenses of appointed members or alternate members**

(1) Subject to subsection (2), an appointed member or an alternate member shall be paid from the funds of the Railways—

(a) such remuneration, if any, as the Minister, after consultation with the Minister responsible for finance, may in his case fix;

(b) such allowances as the Minister, after consultation with the Minister responsible for finance, may fix to meet any reasonable expenses incurred by him in connection with the business of the Board.

(2) No remuneration or allowance may be paid in terms of subsection (1) to a member who is in the full-time employment of the Railways.

#### **13 Members to declare interests**

(1) If a member or his spouse—

(a) tenders for or acquires or holds a direct or indirect pecuniary interest in a contract with the Railways other than a contract of employment; or

(b) knowingly acquires or holds a direct or indirect pecuniary interest in a company or firm applying or negotiating for a contract with the Railways; or

(c) owns immovable property or a right in immovable property or a direct or indirect pecuniary interest in a company or firm which results in his private interests coming or appearing to come into conflict with his duties as a member;

the member shall forthwith disclose the facts to the Board and the Minister:

Provided that this subsection shall not apply in relation to a contract of carriage entered into with the Railways by a member or his spouse in which the member or his spouse receives no preferential treatment over or more advantageous terms than other members of the public.

(2) A member referred to in subsection (1) shall take no part in the consideration or discussion of or vote on any question before the Board which relates to a contract, right, immovable property or interest referred to in that subsection.

(3) The General Manager shall take no part in the consideration or discussion of or vote on any question before the Board which relates to the terms and conditions of his appointment as General Manager.

#### **14 Validity of decisions and acts of Board**

No decision or act of the Board or act done under the authority of the Board shall be invalid by reason only of the fact that—

- (a) the Board consisted of less than six persons; or
- (b) a disqualified person acted as a member at the time the decision was taken or the act was done or authorized;

if the decision was taken or the act was done or authorized by a majority vote of the persons who at the time were entitled to act as members.

#### **15 Execution of contracts and instruments by Railways**

An agreement, contract or instrument approved by the Board may be entered into or executed on behalf of the Railways by any person or persons generally or specially authorized by the Board for that purpose.

#### **16 Transaction of business of an urgent nature**

If it is not practicable to hold a meeting of the Board for the transaction of business of an urgent nature, the chairman, after consulting such of the other members as are available in the circumstances, may deal with the business himself and, as soon as may be thereafter give to the Board full particulars of the nature and extent of the urgency of the business, the circumstances in which the urgency arose and the action taken by him in the matter.

### **PART III**

#### **FUNCTIONS, POWERS AND DUTIES OF RAILWAYS AND APPOINTMENT OF GENERAL MANAGER**

#### **17 Function of Railways**

The function of the Railways shall be to provide, operate and maintain within its area of operation, either by itself or through its agents or jointly with others—

- (a) an efficient system of public transport of goods and passengers by rail; and
- (b) in so far as the Board considers it to be necessary or desirable, an efficient system of public transport of goods and passengers by road.

[Section substituted by section 3 of Act 19 of 1997]

#### **18 Powers of Railways**

For the better exercise of its functions the Railways shall, subject to this Act, have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the First Schedule, either absolutely or conditionally and either solely or jointly with others.

#### **19 Duties of Railways**

- (1) Subject to this Act, it shall be the duty of the Railways to administer its undertakings on sound business principles, due regard being paid to the public interest.
- (2) If, in the Minister's opinion, it is expedient in the public interest that the Railways should do any one or more of the following-
  - (a) construct a line or rail to any point in its area of operation not served by rail transport;
  - (b) supply rail services on any line of rail;
  - (c) carry out any works or operations which, in his opinion, are incidental, ancillary or conducive to the provision of rail services;

he may, after consultation with the Board, direct the Railways to construct the line, supply the services and additionally, or alternatively, carry out the operations concerned, and the Railways shall, with all due expedition, comply with the direction.

(3) Where the Minister has given the Railways a direction in terms of subsection (2), the Board shall set out that direction in its annual report referred to in subsection (1) of *section twenty-two*.

(4) Any costs incurred by the Railways in complying with a direction given by the Minister in terms of subsection (2) shall be met by the Minister out of moneys appropriated for the purpose by Act of Parliament.

[Section substituted by section 4 of Act 19 of 1997]

## 20 General Manager

(1) For the better exercise of its functions and powers the Board, with the approval of the Minister—

(a) shall appoint, on such terms and conditions as the Board deems fit, a person to be general manager—

(i) who shall be ex officio a member of the Board; and

(ii) in whom, subject to the control of the Board, shall be vested the management of the Railways; and

(b) may, subject to subsection (3), delegate to the General Manager such of the powers of the Railways as the Board deems fit.

(2) Notwithstanding any terms and conditions fixed in terms of paragraph (a) of subsection (1), the appointment of the General Manager shall be terminated if the General Manager—

(a) ....

(b) .....

(c) would be required, in terms of paragraph (b) or (c) of section *eight* to vacate his office had that section and paragraphs (b), (c) and (d) of section *seven* applied to him.

[Paragraphs (a) and (b) repealed by section 5 of Act 19 of 1997]

(3) Any delegation of powers in terms of paragraph (b) of subsection (1)—

(a) may be made either generally or specially and subject to such restrictions, reservations and exceptions as the Board may determine;

(b) may be revoked by the Board at any time;

(c) shall not preclude the exercise of the powers by the Board itself.

## 21 By-laws of Railways

(1) Subject to subsection (3), the Railways may make by-laws for—

(a) the good management and conduct of its transport and other operations and the property owned or controlled by it; and

(b) any other matter which, in the opinion of the Board, is necessary or convenient to be provided for in by-laws in connection with any matter referred to in paragraph (a).

(2) By-laws made by the Railways in terms of subsection (1) may provide for—

(a) the imposition of penalties for breaches of the by-laws, but no such penalty shall exceed a fine of level six; or

[Paragraph substituted by section 6 of Act 19 of 1997, and amended by Act 3 of 2009]

(b) the fixing of fees for the parking of vehicles on railway premises.

(3) By-laws made in terms of subsection (1) shall not have effect until they have been approved by the Minister and published in the *Gazette*.

[Subsection amended by section 6 of Act 19 of 1997]

## 22 Submission of plans, reports and information by Railways

(1) In addition to any report that the Railways may be required to submit in terms of the Audit and Exchequer Act [*Chapter 22:03*], the Board shall submit to the Minister as soon as possible after the end of each financial year a report which shall contain—

(a) a business plan for the next five years, setting out—

(i) forecasts of the expected volume of the traffic on each of the routes operated by the Railways, specifying the expected volume of each type of traffic carried on the route concerned; and

(ii) a description of any substantial new scheme or project for the development of any undertaking of the Railways, and a progress report on any existing scheme or project; and

- (iii) the tariffs proposed to be levied in the ensuing financial year for each type of traffic carried by the Railways; and
  - (iv) the estimated costs of operating each type of service in the ensuing financial year; and
  - (v) a summary of the Railways' operational and financial performance in the previous financial year, indicating the extent to which the business plan for that year was adhered to and the reasons for any significant deviation from it; and
  - (vi) the financial results for the previous financial year, showing—
    - A. the direct costs and revenues for each type of traffic; and
    - B. the indirect costs incurred by the Railways;and
  - (vii) any circumstances that may significantly affect the performance of the Railways in the period covered by the business plan; and
  - (viii) criteria by which the Railways' performance in implementing the plan may be assessed; and
  - (ix) any other information that the Minister may require to be included in the plan or that the Board may wish to include in it; and
- (b) an investment programme for the next five years, setting out—
- (i) a brief technical description of the programme; and
  - (ii) where applicable, the current project status of each aspect of the programme; and
  - (iii) the manner in which each aspect of the programme is to be implemented, in particular with regard to the resources needed for its implementation and its co-ordination with any other project or proposal; and
  - (iv) the manner in which the programme affects the business plan; and
  - (v) an estimate of the cost of each aspect of the programme, specifying the foreign currency, if any, needed to implement it; and
  - (vi) the period within which each aspect of the programme is to be completed; and
  - (vii) the economic and other benefits that are anticipated from the programme; and
  - (viii) where possible, criteria by which the Railways' performance in implementing the programme may be assessed; and
  - (ix) any other information that the Minister may require to be included in the programme or that the Board may wish to include in it.
- (2) In addition to the reports referred to in subsection (1), the Board—
- (a) shall submit to the Minister any other report, and provide him with any other information, that he may require in regard to the operations, undertakings and property of the Railways; and
  - (b) may submit to the Minister any other reports that the Board considers desirable.
- (3) The Minister—
- (a) shall lay before Parliament every annual report submitted to him by the Board in terms of subsection (1); and
  - (b) may lay before Parliament any report submitted to him by the Board in terms of subsection (2).

[Section substituted by section 7 of Act 19 of 1997]

### 23 Directions required in national interest

- (1) The Minister may, after consultation with the Board, give to the Railways such directions of a general or specific character as to the exercise by it of its functions, duties or powers as appear to the Minister to be requisite in the national interest.
- (2) If it appears to the Minister that there is a defect in the general plan or arrangements of the Railways for performing any of its functions or exercising any of its powers, he may, after consultation with the Board, give to the Railways directions of a general character for remedying the defect.
- (3) The Railways shall, with all due expedition, comply with any direction given to it in terms of subsection (1) or (2).
- (4) When any direction has been given in terms of subsection (1) or (2), the Railways shall set out that direction in the annual report referred to in subsection (1) of section *twenty-two* unless the Minister has notified the Board that he is of the opinion that it is against the interests of national security for the Railways to do so.

## PART IIIA

### ISSUE OF SHARES AND DEBENTURES BY RAILWAYS

[Part inserted by section 8 of Act 19 of 1997]

#### **23A Authorized share capital of Railways**

(1) The authorized share capital of the Railways shall be such number of shares of such value as the Board may fix by resolution with the approval of the Minister and the Minister responsible for finance.

(2) With the approval of the Minister and the Minister responsible for finance, the Board may by resolution increase the authorized share capital of the Railways.

(3) Where the Board has fixed or increased the authorized share capital of the Railways in terms of this section, the Minister shall cause notice thereof to be published in the Gazette..

#### **23B Allotment, issue and transfer of shares of Railways**

(1) The Board shall allot to the State such number of the Railways' shares, subject to such terms and conditions, as the Minister and the Minister responsible for finance may determine in consultation with the Board.

(2) The remainder of the Railways' shares may be issued to the State and additionally, or alternatively, to persons other than the State in such circumstances and subject to such terms and conditions as may be determined by the Board with the approval of the Minister and the Minister responsible for finance.

(3) Terms and conditions under which the Railways' shares are allotted or issued to the State may include terms and conditions—

(a) for payment to be made out of moneys appropriated for the purpose by Act of Parliament; or

(b) for the value of all or any of the shares to be set off against loans previously granted to the Railways by the State; or

(c) for all or any of the shares to be allotted or issued in consideration for the writing off of loans previously granted to the Railways by the State; or

(d) for all or any of the shares to be allotted or issued in consideration for capital grants previously made to the Railways by the State.

(4) The Railways' shares may be transferred by the holders subject to such terms and conditions, as may be prescribed or be determined by the Minister and the Minister responsible for finance in consultation with the Board:

Provided that no fresh restrictions shall be imposed on the transferability of any share while it is held by a person other than the State.

#### **23C Liability of shareholders**

The liability of the holder of a share issued by the Railways shall be limited to the amount, if any, unpaid on the share.

#### **23D Issue of debentures**

(1) The Railways may issue debentures, which may be taken up in such circumstances and under such terms and conditions as the Minister and the Minister responsible for finance may determine.

(2) Debentures may be issued by the Railways to the State in respect of any loan previously granted by the State to the Railways.

(3) Subject to subsection (2), debentures taken up by the State shall be paid for out of moneys appropriated for the purpose by Act of Parliament.

(4) The Railways' debentures may be transferred subject to such terms and conditions as may be determined by the Minister and the Minister responsible for finance in consultation with the Board:

Provided that no fresh restrictions shall be imposed on the transferability of any debenture while it is held by a person other than the State.

## PART IV

### FINANCIAL PROVISIONS

#### 24 Conduct of financial affairs of Railways

It shall be the object of the Railways so to exercise its functions and conduct its business as to ensure that in each financial year its income is sufficient, taking one year with another—

- (a) to meet the expenditure which is properly chargeable to revenue in that year; and
- (b) to enable the Railways to make provisions for any taxes, duties or rates for which it is liable; and
- (c) to permit the redemption on due date of the Railways' debentures and other loan capital; and
- (d) to enable the Railways to make such appropriations to its general reserve in terms of section *twenty-seven* as may be necessary or desirable; and
- (e) to permit the payments referred to in section *twenty-five C*;

and in general the Railways shall conduct its business on sound commercial lines.

[Section substituted by section 9 of Act 19 of 1997]

#### 25 Capital of Railways

The capital of the Railways shall consist of—

- (a) the share capital of the Railways; and
- (b) any other moneys or assets that may vest in or accrue to the Railways as capital, whether in the course of its operations or otherwise, including moneys borrowed by the Railways.

[Section substituted by section 9 of Act 19 of 1997]

#### 25A Revenues of Railways

The revenues of the Railways shall consist of any moneys, other than moneys referred to in section *twenty-five*, that may accrue to the Railways, whether in the course of its operations or otherwise.

[Section inserted by section 9 of Act 19 of 1997]

#### 25B Fixing of tariffs

(1) Subject to this section, it shall be the responsibility of the Board, in consultation with the Minister, to fix and, where necessary, to vary tariffs for the carriage of goods and passengers or any class thereof by the Railways.

(2) In fixing tariffs under subsection (1), the Board shall ensure that—

- (a) the tariff for any class of traffic is not less than the direct costs of carrying that traffic, averaged over the financial year concerned:

Provided that—

- (i) lower tariffs may be imposed for a limited period where the Board considers that long-term commercial benefits will result from them;
- (ii) the Board shall take into account any subsidy paid or expected to be paid by the State in respect of the carriage of any class of goods or passengers;

and

- (b) sufficient revenues are generated to ensure compliance with section *twenty-four*.

[Section inserted by section 9 of Act 19 of 1997]

#### 25C Payment of dividends

Where in a financial year the revenues of the Railways are more than sufficient—

- (a) to meet the Railways' expenditure which is properly chargeable to revenue in that year; and
- (b) to enable the Railways to make provision for any taxes, duties or rates for which it is liable; and
- (c) to permit the redemption on due date of the Railways' debentures and other loans; and

(d) to enable the Railways to make such appropriations to its general reserve in terms of section *twenty-seven* as are necessary or desirable; the Railways shall pay out of the surplus such dividends to its shareholders as the Board may determine in relation to that year, subject to the approval of the Minister and the Minister responsible for finance.

[Section inserted by section 9 of Act 19 of 1997]

## **26 Railways to make certain charges to income and expenditure account**

The Railways shall charge to its income and expenditure account all charges which in the normal conduct of business are regarded as proper to be made to income and expenditure account and, in so doing, shall make in each financial year proper provision for—

- (a) the depreciation or diminution in value of assets; and
- (b) the payment of interest on, and all other charges and expenses incurred in connection with, loans and debentures; and
- (c) the redemption of loans and debentures at due times to the extent that such redemption exceeds provision for depreciation.

[Section amended by Act 19 of 1997]

## **27 Establishment and operation of general reserve**

(1) The Railways shall establish a general reserve to which, subject to this Part, may be appropriated from a surplus of income over expenditure at the end of its financial year such sums as the Minister may approve.

(2) Subject to this Part, moneys in the general reserve established in terms of subsection (1) may be used by the Railways for such purposes as the Board may consider necessary or expedient for the proper exercise by the Railways of its functions, including the development of its undertakings.

## **28 Meeting of deficiencies**

If in any financial year the income of the Railways, together with any surplus income brought forward from a previous financial year, is insufficient to enable the Railways to meet the charges and to make the provision required by section *twenty-six*, the deficiency shall, unless the Minister otherwise directs, be met from the general reserve established in terms of section *twenty-seven*.

[Section amended by Act 19 of 1997]

## **29 Accounts and records of Railways**

(1) The Railways shall keep proper accounts and other records relating to all its operations, undertakings and property, including such particular accounts and records as the Minister may direct.

(2) The Railways shall prepare and submit to the Minister a statement of accounts in respect of each financial year or such other period as the Minister may direct.

## **30 Appointment of auditors**

The Railways shall appoint as auditors one or more persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [*Chapter 27:12*].

## **31 Audit of accounts of Railways**

(1) The accounts of the Railways kept in terms of subsection (1) of section *twenty-nine* shall be examined by the auditors.

(2) The auditors shall make a report to the Railways on the statement of accounts prepared in terms of subsection (2) of section *twenty-nine* and such report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the state of the financial affairs of the Railways.

(3) In addition to the report referred to in subsection (2), the Minister may require the Railways to obtain from the auditors such other reports, statements or explanations in connection with the operations, undertakings and property of the Railways as the Minister may consider expedient.

(4) If, in the opinion of the auditors—

- (a) they have not obtained the information and explanations they require; or
- (b) the accounts and records referred to in subsection (1) of section *twenty-nine* have not been properly kept; or

(c) the Railways have not complied with this Part;  
the auditors shall include in the report made in terms of subsection (2) or (3), as the case may be, statements to that effect.

(5) Without derogation from subsection (6) of section 9 of the Audit and Exchequer Act [*Chapter 22:03*], the auditors shall be entitled at all reasonable times to require to be produced to them all accounts and other records relating thereto kept by the Railways or its agents and to require from any member or person employed by the Railways or its agents such information and explanations as in their opinion are necessary for the purposes of their audit.

### **32 Investments and loans by Railways**

With the approval of the Minister and subject to any directions given by him on the advice of the Minister responsible for finance, the Railways may,—

- (a) borrow or advance money to enable the Railways to carry out its functions;
- (b) invest such of its funds as are not immediately required in such manner as the Board may determine;
- (c) establish and administer such funds, reserves and accounts not specifically provided for in this Part as the Board may consider appropriate or necessary for the proper exercise of the Railways' functions.

[Section substituted by section 12 of Act 19 of 1997]

## **PART V**

### **CONSTRUCTION AND MAINTENANCE OF RAILWAYS**

### **33 Construction of new railway and other work**

(1) In this section—

“new railway” includes any new line of railway where none existed before and also any deviation, alteration or addition to any existing line of railway, together with all appurtenant equipment and immovable property that is used for the provision of a rail service on the line of railway.

[Subsection amended by section 13 of Act 19 of 1997]

(2) Whenever the construction of any new railway or of any other work in connection with any new or any existing railway is proposed by the Railways and the Railways wishes to acquire any land or materials or any interest in or right over any land and is unable to do so by agreement upon reasonable terms with the owner of the land affected, the Board shall notify the Minister of—

- (a) the details of the new railway or other work; and
- (b) the locality of the land or materials which the Railways wishes to expropriate or the nature of the interest in or right over any land;

by reference to a plan showing the route of the new railway or the extent of the work, as the case may be.

(3) Subject to subsection (4), if the Minister approves of the new railway or other work of which he has been notified in terms of subsection (1), he may, on behalf of the Railways, compulsorily acquire such land or materials or such interest in or right over any land as he may deem necessary or desirable in the public interest.

(4) Parts III, V and VIII of the Land Acquisition Act [*Chapter 20:10*] shall, subject to subsection (5), apply to the expropriation of any land or materials or the acquisition of an interest in or right over any land referred to in subsection (3) and such land, materials or interest in or right over land shall vest in the Railways.

(5) Any person duly authorized by the Railways shall have the same powers, exercisable in the same manner and subject to the same conditions, as are conferred upon the duly authorized representative or employee of an acquiring authority in terms of section 11 of the Land Acquisition Act [*Chapter 20:10*].

(6) Nothing contained in this Act shall give the Minister, the Railways or any person authorized by the Railways the power to acquire, whether compulsorily or by agreement, any Communal Land or any right over or interest in Communal Land otherwise than in accordance with the provisions of the Communal Land Act [*Chapter 20:04*].

(7) The State shall bear the cost of construction of any new railway, which shall be met by the Minister out of moneys appropriated for the purpose by Act of Parliament.

[Subsection inserted by section 13 of Act 19 of 1997]

### 34 Road and rail crossings

(1) Subject to this section—

(a) the Railways may—

- (i) carry a railway line across, over or under a road by level crossing, bridge, subway or otherwise; or
- (ii) provide protective or warning installations at a level crossing; and

(b) any person may—

- (i) carry a road across, over or under a railway line by level crossing, bridge, subway or otherwise; or
- (ii) provide protective or warning installations at a level crossing.

(2) The Railways shall, in exercising its powers in terms of paragraph (a) of subsection (1), endeavour to agree with any person affected thereby a plan for the construction and maintenance of the work concerned and, in the event of the parties failing to agree, either party may refer the matter to the Minister whose decision shall be final.

(3) Any person referred to in paragraph (b) of subsection (1) shall, in exercising his powers in terms of that paragraph, endeavour to agree with the Railways a plan for the construction and maintenance of the work concerned and, in the event of the parties failing to agree, either party may refer the matter to the Minister whose decision shall be final.

(4) Subject to subsection (5), the cost of any works constructed in accordance with the powers conferred upon the Railways or any person in terms of subsection (1) shall be paid by—

- (a) the Railways; or
- (b) the person responsible for the maintenance of the road which crosses the railway line; or
- (c) both the person referred to in paragraph (a) and the person referred to in paragraph (b);

and, in the event of the parties concerned failing to agree, the matter shall be determined by arbitration in accordance with the Arbitration Act [*Chapter 7:02*] and for that purpose the parties shall be deemed to be parties to a submission in which the reference is to two arbitrators.

(5) If the person referred to in paragraph (b) of subsection (4) is the State, the Minister shall determine what proportion of the cost shall be borne by each party.

### 35 Adjoining land may be entered upon to prevent or repair accidents

(1) Where—

- (a) a slip or accident has happened; or
- (b) in the opinion of the Railways, there is the likelihood that a slip or accident may happen;

to any cutting, embankment or other working under the control of the Railways, the Railways may enter upon any land adjoining such work with such men, animals, vehicles and equipment and do such acts thereon as are necessary for the purpose of repairing or preventing, as the case may be, such slip or accident:

Provided that in the exercise of the powers conferred by this subsection the Railways shall cause as little injury to the adjoining land as the nature of the slip or accident will permit and the work shall be executed with all possible dispatch.

(2) The Railways shall pay compensation to any person who suffers any loss or deprivation of rights by any action taken in terms of subsection (1) and Parts V and VIII of the Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to the payment of such compensation:

Provided that any reference in Part V of that Act to the date of the publication of a preliminary notice in the *Gazette* shall be read and construed as a reference to the date of the exercise by the Railways of its powers in terms of subsection (1).

## PART VI

### OFFENCES AND PENALTIES

#### 36 Obstruction of employee of Railways

Any person who—

- (a) wilfully obstructs any employee of the Railways in the execution of his duty upon any railway or upon or in any of the stations or other works or premises connected therewith; or
- (b) obstructs any person acting under the authority of the Railways in the lawful exercise of its powers in setting out the line of a railway; or
- (c) pulls up or removes any poles or stakes driven into the ground for the purpose of setting out the line of a railway; or
- (d) defaces or destroys any marks made for the purpose of setting out the line of a railway;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section amended by Act 3 of 2009]

#### 37 Offences on railway premises

(1) In this section—

“officer” means—

- (a) a police officer; or
- (b) a member of the Defence Forces when acting in aid of the civil power; or
- (c) an employee of the Railways.

(2) Any person who—

- (a) is found in or upon; or
- (b) enters or remains in or upon;

railway premises without reasonable excuse, the proof whereof shall lie on him, shall be guilty of an offence and liable to a fine not exceeding level six or to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by Act 22 of 2001]

(3) Any person who, in or upon any railway premises, has in his or her possession without reasonable excuse (the proof whereof shall lie on him or her) any article or implement capable of being used to destroy, damage or dismantle any railway, telephone or telegraph lines or power cables or the works or appurtenances thereof, or any locomotive, rolling-stock or other vehicle using such railway, shall be guilty of an offence and, if there are no special circumstances peculiar to the case as provided for in subsection (3b), to imprisonment for a period of not less than five years or more than ten years.

[Subsection substituted by Act 3 of 2009]

(3a) A court sentencing a person to imprisonment under subsection (3) shall not order the suspension of any part of the sentence if the effect of such order is that the convicted person will serve a sentence of less than five years.

[Subsection substituted by Act 3 of 2009]

(3b) If a person referred to in subsection (3) satisfies the court that there are special circumstances peculiar to the case, which circumstances shall be recorded by the court, why the penalty provided under subsection (3) should not be imposed, the convicted person shall be liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding five years or both

[Subsection substituted by Act 3 of 2009]

(4) Any officer may request any person who—

- (a) is or has been found or who enters or remains or has entered or remained in or upon railway premises to give an explanation of his presence in or upon such railway premises;
- (b) in or upon railway premises, has or has had in his possession any article or implement referred to in subsection (3) to give an explanation of his possession thereof in or upon such railway premises;

and any explanation so given shall, notwithstanding anything contained in any law, be admissible in evidence before any court in any proceedings brought against the person who gave it.

### **38 Certain offences and punishment therefor**

(1) Any person who wilfully and maliciously—

- (a) with intent to obstruct, upset, overthrow, injure or destroy any locomotive, rolling-stock or other vehicle using such railway or to endanger the safety of any person travelling or being upon such railway—
  - (i) puts, places, casts or throws upon or across any railway any wood, stone or other matter or thing; or
  - (ii) makes, shows, hides, removes, damages or alters any signal or light upon or near to any railway; or
  - (iii) turns, moves or diverts any points or other machinery thereof; or
  - (iv) does or causes to be done any other matter or thing; or
- (b) sets fire to any station, warehouse or other building ancillary to any railway; or
- (c) sets fire to any goods being in any building referred to in paragraph (b);

shall be guilty of an offence and liable, if there are no special circumstances peculiar to the case as provided for in subsection (5d), to imprisonment for a period of not less than five years or more than ten years.

[Subsection amended by Act 3 of 2009 and Act 1 of 2011]

(2) Any person who wilfully or maliciously—

- (a) with intent to obstruct, upset, overthrow, injure or destroy any locomotive, rolling-stock or other vehicle using a railway or to endanger the safety of any person travelling or being upon a railway, takes up, removes or displaces any rail, sleeper or other matter or thing; or
- (b) propels at or causes to fall or strike against, into or upon any locomotive, rolling-stock or other vehicle using a railway or the works or appurtenances of such railway, any article or thing likely to cause damage or injury, with intent to endanger the safety of any person travelling or being upon any such locomotive, rolling-stock or other vehicle;

shall be guilty of an offence and liable to be sentenced to imprisonment for life liable to be sentenced to imprisonment for life or any definite period of imprisonment of not less than ten years, if there are no special circumstances peculiar to the case as provided for in subsection (5d).

[Subsection amended by Act 3 of 2009 and Act 1 of 2011]

(3) Any person who receives or takes possession of stolen equipment used for the provision of a railway service, including (but not limited to) any locomotive, rolling-stock, railway track, sleeper, telephone or telegraph line, or power cable, or any part or component of any of the foregoing—

- (a) knowing that it has been stolen; or
- (b) realising that there is a real risk or possibility that it has been stolen;

shall be guilty of an offence, and if there are no special circumstances peculiar to the case as provided for in subsection (5d), be liable to imprisonment for a period of not less than ten years.

[Subsection substituted by Act 1 of 2011]

(4) Any person who—

- (a) otherwise than for lawful cause (the proof whereof shall lie on him or her), has on his or her person, or in his or her possession, or under his or her immediate control, or upon any land or upon or in any premises, any equipment used for the provision of a railway service, including (but not limited to) any locomotive,

rolling-stock, railway track, sleeper, telephone or telegraph line, or power cable, or any part or component of any of the foregoing that is not being used in connection with any service lawfully provided to him or her by the Railways; or

(b) carries or causes to be carried on a passenger train any paraffin, diesel, petrol or explosives or other hazardous substance; or

(c) digs, excavates, drills, tunnels under or otherwise tampers with the ground within forty-five metres on either side of the middle of a railway track to the actual or potential detriment of the safety of railway traffic;

shall be guilty of an offence and, if there are no special circumstances peculiar to the case as provided for in subsection (5d), be liable to imprisonment for a period of not less than five years or more than ten years.

[Subsection substituted by Act 1 of 2011]

(5) If a person is charged with contravening subsection (4)(a) in circumstances where—

(a) the equipment in question was found on any land or in any premises to or in which the accused person has any title or interest whatsoever (including shares in a company that owns such land or premises); and

(b) the accused person knowingly used or permitted the use of the land or premises in question for the purpose of hiding or storing the equipment in question; and

(c) the accused person—

(i) had stolen the equipment in question; or

(ii) knew that the equipment in question had been stolen; or

(iii) realised that there was a real risk or possibility that the equipment in question had been stolen;

the accused person shall not be charged concurrently or alternatively with contravening subsection (3), but a prosecutor may, for the purposes of subsection (5a), adduce evidence showing that the offence was committed in the circumstances referred to in paragraphs (a), (b) and (c).

[Subsection substituted by Act 1 of 2011]

(5a) If a court convicts a person for contravening subsection (4)(a) and finds that the offence was committed in the circumstances referred to in subsection (5)(a), (b) and (c), then, in addition to imposing the penalty provided for that offence under subsection (4)(a), the court shall order to be forfeited to the State any title to or interest in the land or premises belonging to that person which is referred to in subsection (5)(a).

[Subsections inserted by Act 1 of 2011]

(5b) Where a court has ordered to be forfeited to the State any land or premises in the circumstances described in subsection (5a), any transaction involving the land or premises that—

(a) is commenced at any time between the date when the person was charged for an offence against subsection (4)(a) and date when he or she was convicted of it (or, if the person appeals against the conviction or sentence or both, the date when the appeal is finally dismissed, or abandoned); and

(b) has the effect of alienating to any other person the title or interest of the convicted person in that land or premises;

shall be void:

Provided that the transaction shall not be void if the person charged for an offence against subsection (4)(a) is acquitted.

[Subsections inserted by Act 1 of 2011]

(5c) A court sentencing a person to imprisonment under subsection (1), (2), (3) or (4) shall not order the suspension of any part of the sentence if the effect of such order is that the convicted person will serve a sentence of less than five years (in the case of a conviction for an offence in terms of subsection (1) or (4)) or ten years (in the case of a conviction for an offence in terms of subsection (2) or (3)).

[Subsections inserted by Act 1 of 2011]

(5d) If a person referred to in subsection (1), (2), (3) or (4) satisfies the court that there are special circumstances peculiar to the case, which circumstances shall be recorded by the court, why the penalty provided under subsection (1), (2), (3) or (4) should not be imposed, the convicted person shall be liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding five years or both.

[Subsections inserted by Act 1 of 2011]

(6) Any driver of a train or other person employed in connection with the operation of a train or railway who performs his or her duties negligently or under the influence of alcohol or drugs in cases where the performance of his or her duties in those circumstances is likely to lead to serious injury to a person or serious damage to property shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or both.

[Subsection inserted by Act 3 of 2009]

### 39 Power to arrest persons and detain goods

(1) Without derogation from the Criminal Procedure and Evidence Act [*Chapter 9:07*], it shall be lawful for—

- (a) any person to arrest without warrant anyone who is found committing any offence in terms of subsection (2) or (3) of section *thirty-seven* or section *thirty-eight*;
- (b) any person authorized by the Railways to exercise powers of arrest in terms of this paragraph to arrest anyone who is reasonably suspected of having committed an offence in terms of any of the provisions of this Act;

and immediately to convey the person arrested to a police officer in order that he may be dealt with according to law.

(2) Any person empowered in terms of subsection (1) to arrest any other person may request the assistance of any bystander in effecting such arrest and such bystander is hereby authorized to render such assistance.

(3) Any person who, acting reasonably and in good faith and without culpable ignorance or negligence, arrests any other person in the purported exercise of the powers conferred in terms of this section shall not be liable for damages for unlawful arrest.

(4) Any person authorized by the Railways to exercise the powers conferred by this subsection may detain and examine any goods carried or to be carried by the Railways in order to ascertain whether the provisions of any by-laws are being complied with.

### 39A Transportation of equipment used for provision of railway services

(1) In this section and section 39B—

“customs clearance documentation”, in relation to equipment used for the provision of a railway service, means any documentation endorsed by the Zimbabwe Revenue Authority for the purpose of permitting the importation into or transit through Zimbabwe of the equipment in question;

“equipment used for the provision of a railway service” means any material component essential for the maintenance of a railway infrastructure, and includes (but is not limited to) any locomotive, rolling-stock, railway track, sleeper, telephone or telegraph line, or power cable, or any part or component of any of the foregoing;

“ownership”, in relation to a vehicle, includes the possession of a vehicle by a purchaser pending the transfer of its ownership to the purchaser, and “own” and “owner” shall be construed accordingly;

“producing on demand”, in relation to the production by an owner of a vehicle of a special police clearance certificate or customs clearance documentation in the circumstances described in subsection (2)(c), means procuring for the driver of the vehicle the required certificate or documentation to enable the driver to produce it on demand;

“regulating authority”, in relation to any area of Zimbabwe, means the police officer who, in terms of section 4 of the Public Order and Security Act [*Chapter 11:17*] (No. 1 of 2002), is the regulating authority for that area;

“special police clearance certificate” means a police clearance certificate issued in respect of the transportation of equipment used for the provision of a railway service in terms of subsection (6);

“things liable to seizure or forfeiture” means any equipment used for the provision of a railway service that is the subject-matter of an offence under section 38(4)(a) or subsection (2), and any vehicle used to transport the same that is the subject-matter of offences under subsection (2) and (by the application of subsection (3)) section 38(4)(a);

“vehicle” means—

- (a) a motor vehicle as defined in the Road Traffic Act [*Chapter 13:11*]; or
- (b) a trailer as defined in the Road Traffic Act [*Chapter 13:11*], whether or not attached to and drawn by a motor vehicle; or
- (c) a pushcart or scotchcart.

(2) Any person who—

- (a) being the driver or person in control of a vehicle owned by him or her, transports or has in his or her possession in or upon such vehicle any equipment used for the provision of a railway service; or
- (b) being the driver or person in control of a vehicle, transports or has in his or her possession in or upon such vehicle any equipment used for the provision of a railway service without the knowledge of the owner of the vehicle:

Provided that the driver or person referred to in this paragraph shall have the burden of proving, to the satisfaction of an inspector, police officer or any court, that he or she transported or had in his or her possession in or upon such vehicle any equipment used for the provision of a railway service with the knowledge of the owner of the vehicle;

- (c) being the owner of a vehicle, authorises the driver or person in control of the vehicle to transport or have in his or her possession in or upon such vehicle any equipment used for the provision of a railway service;

without producing on demand by an inspector or police officer a special police clearance certificate obtained in terms of this section or, as the case may be, the customs clearance documentation relating thereto, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) Where a person is unable to produce on demand by an inspector or police officer a special police clearance certificate obtained in terms of this section or the customs clearance documentation referred to in subsection (2), such person shall, in addition to being charged with the offence referred to in subsection (2), be charged with the offence referred to in section 38(4)(a) and liable to the mandatory penalty therefor, unless he or she can show lawful cause (the proof whereof shall lie on him or her), for having in his or her possession, or under his or her immediate control, any equipment used for the provision of a railway service.

(4) A person required to obtain a special police clearance certificate in terms of subsection (2) shall request the certificate from the regulating authority responsible for the area within which the vehicle is ordinarily kept at night.

(5) At the request of a person required to obtain a special police clearance certificate in terms of subsection (2), the regulating authority shall, upon being satisfied that—

- (a) the vehicle is ordinarily kept at night within the area for which the regulating authority is responsible; and
  - (b) the person has lawful cause for transporting in a vehicle any equipment used for the provision of a railway service;
- issue to the person a special police clearance certificate in accordance with subsection (6).

(6) A special police clearance certificate shall—

- (a) identify the holder of the certificate, the vehicle or vehicles in respect of which it is issued, the nature and quantity (by weight, length or both) of the equipment used for the provision of a railway service that is to be transported, and the regulating authority that issued the certificate; and
- (b) specify the lawful cause for which the equipment used for the provision of a railway service is to be transported in or upon the vehicle or vehicles referred to in the certificate; and
- (c) specify the period for which it shall be valid; and
- (d) be valid for not more than forty-eight hours:

Provided that if the equipment used for the provision of a railway service is to be transported by or with the knowledge of the Railways, the regulating authority may issue a special police clearance certificate having a period of validity of up to thirty days;

and

- (e) be signed by or on behalf of the regulating authority.

(7) No fee shall be charged for the issuance of a special police clearance certificate except the prescribed fee for a duplicate special police clearance certificate or the replacement of a lost or destroyed special police clearance certificate.

**39B Forfeiture of unlawfully transported equipment used for the provision of railway services and vehicle used in connection therewith**

- (1) Where a person is charged with contravening—
  - (a) section 38(3) or 38(4)(a), any equipment used for the provision of a railway service that is the subject-matter of the offence shall be liable to seizure and forfeiture under this section; or
  - (b) section 39A(2) alone, any to equipment used for the provision of a railway service that is the subject-matter of the offence shall be liable to seizure under this section pending the prosecution of the offence; or
  - (c) sections 39A(2) and 38(4)(a) concurrently, any equipment used for the provision of a railway service that is the subject-matter of the offences and any vehicle used to transport the same shall be liable to seizure and forfeiture under this section.
- (2) Where a person is charged with contravening sections 39A(2) and 38(4)(a) concurrently, and the vehicle used in connection with such offences was availed to him or her by another person who owns the vehicle, the vehicle shall still be liable to seizure and forfeiture under this section unless the owner proves to the satisfaction of an inspector, police officer or court that he or she was unaware that the vehicle would be so used.
- (3) An inspector or police officer may seize any things liable to seizure or forfeiture which he or she has reasonable grounds for believing are the subject-matter of any offence under section 38(3) or 38(4)(a), or of any concurrent offences under sections 39A(2) and section 38(4)(a).
- (4) All things liable to seizure or forfeiture which have been seized in terms of subsection (3) shall—
  - (a) be taken forthwith and delivered to a place of security under the control of an inspector or police officer; and
  - (b) be held until the criminal proceedings which are instituted in relation to those things—
    - (i) have been abandoned or discontinued or are concluded otherwise than with the conviction of the accused, in which event the custodian inspector or police officer shall forthwith restore any such thing to the accused or the owner thereof, as may be appropriate; or
    - (ii) have resulted in the conviction of the accused, in which event the convicting court shall, where the accused is convicted of contravening—
      - A. section 39A(2) alone, order any such thing to be restored to the accused or the owner thereof, as may be appropriate; or
      - B. section 38(3) or 38(4)(a), or sections 39A(2) and section 38(4)(a) concurrently, order any such thing to be forfeited to the State.

[Section inserted by Act 1 of 2011]

**PART VII**

GENERAL

**40 Inquiries**

The Railways may, subject to this Act, hold a private inquiry into any accident or mishap.

**41 Use of water**

Subject to the Water Act [*Chapter 20:22*] and of any by-laws of a local authority which may be applicable, the Railways shall have the right, notwithstanding any other law, to—

- (a) sink pits, boreholes and wells on Railway premises and use the water so acquired; and
- (b) use any water naturally existing upon or flowing on Railway premises for all or any of the following purposes or for any similar purposes—
  - (i) working a line of railway;
  - (ii) constructing and working a new railway;
  - (iii) supplying the crew, passengers and livestock carried on a railway;
  - (iv) supplying the employees of the railway for primary purposes as defined in subsection (1) of section 2 of the Water Act [*Chapter 20:22*].

#### 42 Proceedings on failure of Board or Railways to comply with Act

(1) If at any time the Minister is satisfied that the Board or the Railways has failed to comply with this Act, he may, by notice in writing, require the Board or the Railways, as the case may be, to make good the default within a specified time.

(2) If the Board or the Railways fails to comply with a notice issued in terms of subsection (1), the Minister may apply to the High Court for an order compelling the Board or the Railways, as the case may be, to remedy the default and the High Court may make such order on the application as it thinks fit.

#### 43 Regulations

(1) The Minister may make regulations providing for—

- (a) the control and safety of road traffic at railway level crossings, the provision of warning and other devices for that purpose and the precautions to be adopted by the driver of a train or any road vehicle approaching any such crossing, including the duty of the driver of a road vehicle to bring such vehicle to a stop;
- (b) the regulation or prohibition of the crossing of any railway line by any person;
- (c) the protection of telegraph and telephone lines and apparatus and power lines on railway premises from interference or injury or the risk of injury or injurious affection by power lines or works;
- (d) the control and removal of lights or illuminated signs which are liable to affect the safe working of any railway line;
- (e) the rules of procedure and evidence at an inquiry referred to in section *forty* including the application, *mutatis mutandis*, of all or any of the provisions of the Commissions of Inquiry Act [*Chapter 10:07*];

(e1) the reduction of the share capital of the Railways;

[Paragraph inserted by section 14 of Act 19 of 1997]

(e2) the application, subject to such modification as may be prescribed, of any of the provisions of the Companies Act [*Chapter 24:03*] in relation to the Railways' shares and debentures;

[Paragraph inserted by section 14 of Act 19 of 1997]

(f) all matters which, in his opinion, are necessary or convenient to be provided for in order to carry out or give effect to this Act.

(2) Regulations made in terms of subsection (1) may provide penalties for any contravention thereof:

Provided that no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[Subsection substituted by section 14 of Act 19 of 1997 and amended by Act 22 of 2001]

[Amendment to section 43 by section 51 of Act 3 of 2009 not incorporated as it repeals words "level seven" and "eight months" which are not contained in the section. - Law Reviser]

(3) Regulations shall not be made in terms of paragraph (e1) or (e2) of subsection (1) in relation to the Railways' shares and debentures without the approval of the Minister responsible for finance.

[Subsection inserted by section 14 of Act 19 of 1997]

#### 44 Provisions relating to Former Undertaking

(1) Until such time as the Former Undertaking is dissolved in terms of subsection (2) the Second Schedule shall apply in relation to the Former Undertaking and its properties.

(1a) Whenever the Governments of Zimbabwe and Zambia designate any immovable property for transfer to the Railways as envisaged by paragraph 6 of Part I of the Second Schedule, the Former Undertaking shall deliver to the Railways—

- (a) a document specifying the property so designated; and
- (b) all title deeds and other documents conferring or evidencing title to the property so designated;

and that property shall vest in the Railways with effect from a date specified in that document.

[Subsection inserted by section 15 of Act 19 of 1997]

(1b) The Registrar of Deeds shall make such endorsements on the title deeds and in his registers as may be required by reason of any transfer of immovable property referred to in subsection (1a), and all such endorsements shall be exempt from stamp duty, fees of office and other charges.

[Subsection inserted by section 15 of Act 19 of 1997]

(1c) Subsections (1a) and (1b) shall apply, *mutatis mutandis*, in relation to the mining rights, water rights and any similar rights and for giving effect to their transfer in any public registry.

[Subsection inserted by section 15 of Act 19 of 1997]

(2) When the Minister is satisfied that the Former Undertaking has completed the transfer of its assets and liabilities to the Railways and the Zambia Railways he shall, by statutory instrument—

(a) dissolve the Former Undertaking; and

(b) repeal the Second Schedule and Part VII of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963, of the United Kingdom; with effect from such date as may be specified in the statutory instrument.

#### 45 Savings

(1) Notwithstanding the repeal of the legislation specified in the Third Schedule—

(a) the Transport Services (Railways) (No. 2) Regulations, 1967 (Rhodesia Government Notice No. 457 of 1967) which were applicable to any contract of employment or pension scheme or any contract relating to the carriage of passengers or goods or the supply of goods or services immediately before the 1st April, 1973, shall continue to apply to such contract or pension scheme, as the case may be, as if the legislation specified in the Third Schedule had not been repealed;

(b) any rights vested in the Railways or the Former Undertaking in terms of any law specified in the Third Schedule, whereby the Railways or the Former Undertaking, as the case may be, is empowered to use, take possession of, hold and retain any land for the purposes of the construction, maintenance and working of a line of railway, together with such land as is required for junctions, sidings and stations and for all other works and approaches, which subsisted immediately before the 1st April, 1973, shall continue in force as if the laws specified in the Third Schedule had not been repealed:

Provided that this paragraph shall not be construed as empowering the Railways or the Former Undertaking to enter upon or take possession of any land not held by the Railways or the Former Undertaking, as the case may be, immediately before the 1st April, 1973;

(c) where in the exercise of any rights referred to in paragraph (c) the Railways was, immediately before the 1st April, 1973, working a quarry or otherwise obtaining materials from a particular place, the Railways may on or after that date continue to work that quarry or obtain materials from that place in accordance with the relevant provisions of the laws specified in the Third Schedule;

(d) the guarantee by the Government in terms of section 4 of the Rhodesia Railways Loans Guarantee Act, 1950 (No. 12 of 1950) shall extend to the repayment of the whole of the principal amount of any loan under that Act and to any interest thereon and any sums required for the fulfilment of such guarantee shall be paid out of the Consolidated Revenue Fund which is hereby appropriated to the purpose.

(2) As soon as possible after the 1st April, 1973, the Railways shall lodge with the Registrar of Deeds in respect of each of the rights referred to in paragraph (c) of subsection (1)—

(a) a diagram signed by a land surveyor showing the course, situation and extent thereof; or

(b) a plan to such scale, in such form and grouped into such sections as the Registrar of Deeds may approve showing the course, situation and extent thereof, together with a description of the land affected thereby.

(3) On receipt of a diagram or plan lodged in terms of subsection (2), the Registrar of Deeds shall where possible cause a note of the extent of the right concerned to be made in his register against the land affected and an endorsement on the office copy of the title deed, if any, and if at any time thereafter—

(a) the original of the title deed is lodged in the Deeds Registry for any purpose, he shall cause a similar endorsement to be made thereon;

(b) a title deed is issued in respect of the land, he shall cause the necessary endorsement to be made thereon.

(4) The Railways shall notify the Registrar of Deeds in the event of any right noted in terms of subsection (3) ceasing to be of force and effect and the Registrar of Deeds shall cancel any notings in his registers and endorsement on the relevant title deeds in respect thereof.

(5) No stamp duty, fee of office or other charge shall be payable in respect of anything done by the Registrar of Deeds in terms of subsection (3) or (4).

**FIRST SCHEDULE (Section 18)**

POWERS OF RAILWAYS

1. To acquire, establish and construct depots, stations, harbours, yards, tracks, workshops, stores, offices, hotels, houses and other premises necessary or convenient for the performance of the functions of the Railways or the exercise of the powers referred to in paragraph 2 and, for those purposes, to buy, take on lease or in exchange, hire or otherwise acquire immovable property and interests therein and rights over the same and concessions, grants, rights, powers and privileges in respect thereof.
2. To provide accommodation, entertainment and other facilities for passengers carried by the Railways and other persons.
3. Subject to the approval of the Minister, to acquire, take on lease or in exchange or invest in all or part of the business, property and liabilities of any person carrying on transport services, and to carry on or liquidate or wind up such business or undertaking.
4. To provide, operate or maintain a pipeline—
  - (a) in the property of the Railways; or
  - (b) on the property of any other person with his consent; or
  - (c) in pursuance of an authority granted by the Minister in terms of subsection (1) of section 3 of the Pipelines Act [*Chapter 13:08*].
5. To construct or to buy, take in exchange, hire or otherwise acquire movable property, necessary or convenient for the performance of the functions of the Railways or the exercise of its powers in terms of this Schedule.
6. To maintain, alter and improve property of the Railways.
7. To apply for, buy or otherwise acquire patents, licences, concessions or the like conferring an exclusive or non-exclusive or limited right to use information or a process which may seem to the Board capable of being used for the purposes of the Railways or the acquisition of which may seem to the Board calculated, directly or indirectly, to benefit the Railways and to use, exercise, develop and grant licences in respect of or otherwise turn to account rights, information and processes so acquired.
8. To enter into an agreement with any person whatsoever to obtain from or grant to such person, gratuitously or otherwise, rights or concessions in connection with transport services and other operations:

Provided that, if the Minister directs that in the case of any such agreement or class of such agreements his approval is required, the Railways shall not enter into any such agreement or agreements of such a class without the approval of the Minister having been obtained.
9. To determine—
  - (a) subject to the approval of the Minister, the rates and charges for services rendered by the Railways; and
  - (b) the terms and conditions under which goods or passengers will be accepted for carriage;and to make different provision for different passengers or classes of passengers or different goods or classes of goods.
10. To sell, exchange, lease, mortgage, dispose of, turn to account or otherwise deal with property of the Railways or any part thereof:

Provided that no property which exceeds forty thousand dollars in value shall be so dealt with without the Minister's approval.
11. To draw, make, accept, endorse, discount, execute and issue for the purpose of the business of the Railways promissory notes, bills of exchange, bills of lading, securities and other negotiable and transferable instruments.
12. To insure against losses, damages, risks and liabilities which the Railways may incur.
13. To effect, whether as agent or otherwise, the insurance of persons and goods carried by the Railways.
14. To make contracts and to enter into suretyships or give guarantees in connection with the performance of the functions or the exercise of the powers of the Railways and to modify or rescind such contracts, suretyships or guarantees.
15. Subject to section *twenty*, to appoint and employ, subject to such rules governing their conduct whilst on duty and upon such terms and conditions as the Railways deems fit, such persons as it considers necessary for conducting the affairs of the Railways, and to suspend and discharge any such persons.
16. To pay remuneration, allowances and bonuses and to grant leave of absence to employees.

17. To provide pecuniary benefits for employees of the Railways on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants and, for that purpose, to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for such employees and their dependants any or all of the pecuniary benefits to which this paragraph relates.
18. To—
  - (a) purchase, take on lease or in exchange or otherwise acquire land or buildings for the accommodation or recreation of employees of the Railways;
  - (b) construct on land purchased in terms of subparagraph (a) buildings for the accommodation or recreation of employees of the Railways.
19. With the approval of the Minister and the Minister responsible for finance, to—
  - (a) sell or lease buildings referred to in subparagraph (a) or (b) of paragraph 18 to employees of the Railways;
  - (b) guarantee loans made to employees of the Railways or their spouses for the purchase of land or buildings for residential purposes, the construction of dwelling-houses and the improvement of dwelling-houses or land which are the property of such employees or their spouses;
  - (c) provide security in respect of loans such as are described in subparagraph (b) by the deposit of securities in which the Railways is hereby authorized to invest such moneys as the Board may deem necessary for the purpose;
  - (d) make grants or loans or guarantee loans to any club for the purpose of providing facilities for the recreation of employees of the Railways;
  - (e) make loans to employees of the Railways for the purchase of dwelling-houses or vehicles, tools or other equipment to be used by those employees in carrying out their duties.
20. To do anything for the purpose of improving—
  - (a) the skill, knowledge or usefulness of persons employed in connection with the provision of transport services; or
  - (b) the efficiency of the equipment of the Railways or the manner in which the equipment is operated;and in that connection to provide or assist other persons in providing facilities for training, education and research:

Provided that the Railways shall not make grants or loans to educational institutions without the approval of the Minister responsible for finance.
21. To grant such scholarships or bursaries as the Railways considers to be in the interests of the transport industry.
22. To make subscriptions or donations to charitable or benevolent funds or organizations.
23. Generally, to do all such things as are incidental or conducive to the performance of the functions of the Railways or are incidental to the powers specified in this Schedule or which are calculated, directly or indirectly, to enhance the value of or to develop the transport services or other operations or property of the Railways.

## **SECOND SCHEDULE (Section 44)**

### PROVISIONS RELATING TO FORMER UNDERTAKING

#### **PART I**

##### BOARD OF MANAGEMENT AND FUNCTIONS, POWERS AND DUTIES OF FORMER UNDERTAKING

###### *Interpretation of terms in this Schedule*

1. In this Schedule—

“Board of Management” means the board of management of the Former Undertaking appointed in terms of Part VII of the Order in Council;

“Higher Authority” means the Higher Authority for Railways constituted by Part VII of the Order in Council;

“Order in Council” means the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963, of the United Kingdom.

###### *Terms of appointment to Board of Management*

2. (1) Subject to the provisions of this Part—

- (a) the chairman of the Board of Management shall hold office for such term as the Higher Authority shall determine at the time of his appointment; and
- (b) the other members of the Board of Management shall hold office for a period of three years from the date of their appointment or such shorter period as may be specified in their instrument of appointment:

Provided that the chairman and any other member of the Board of Management may resign his office by notice in writing under his hand given to the Higher Authority.

(2) A member, on vacating his office at the expiration of the term thereof, shall be eligible for reappointment.

(3) The Government shall designate as a deputy chairman one of the members of the Board of Management appointed by it in terms of the Order in Council.

(4) Every member of the Board of Management shall receive from the funds of the Former Undertaking such remuneration as the Higher Authority may at the time of his appointment determine and such fees and allowances as the Higher Authority may from time to time prescribe:

Provided that, if a member of the Board of Management is also a member of the Public Service or an employee of the Railways, he shall not receive from the funds of the Former Undertaking any remuneration, fees or allowances.

*Qualifications and disqualifications for membership of Board of Management*

3. (1) Each member of the Board of Management shall be chosen on account of his wide experience and proved capacity in general administration or in agriculture, commerce, industry, mining, transport or financial affairs or in the administration or the organization of workers.

(2) A person shall be disqualified from being appointed or being a member of the Board of Management so long as he is a member of the Parliament of Zimbabwe or a member of the National Assembly of Zambia.

*Removal of member from office*

4. (1) If the Higher Authority is satisfied that a member of the Board of Management—

- (a) is disqualified from membership of the Board of Management; or
- (b) has become insolvent or has made a composition or arrangement with his creditors; or
- (c) has absented himself from meetings of the Board of Management for a continuous period of six months except with the prior consent of, or for some reason approved by, the chairman; or
- (d) is incapacitated by physical or mental illness; or
- (e) is guilty of misbehaviour; or
- (f) is otherwise unable or unfit to discharge the duties of a member;

the Higher Authority may declare his office as a member of the Board of Management to be vacant and shall notify the fact in such manner as it may think fit and thereupon the office of that member shall become vacant.

(2) The Board of Management may continue to act notwithstanding any vacancy in the number of members.

*Procedure of Board of Management*

5. (1) The quorum of the Board of Management shall be five.

(2) At all meetings of the Board of Management the chairman or, in his absence, a deputy chairman shall preside.

(3) All questions coming or arising before a meeting of the Board of Management shall be decided by a majority of the members present and voting thereon at that meeting of the Board of Management and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

(4) If a member of the Board of Management is or becomes the holder of, or tenders for, any contract for the supply of materials to, or the execution of work for, the Former Undertaking or is or becomes concerned in the management of any company holding or tendering for such a contract as aforesaid or is interested, directly or indirectly, in any company or partnership making any application to the Board of Management, he shall forthwith make full disclosure of the facts to the Board of Management and shall not take part in the consideration or discussion of any question with respect to such contract or such application or vote thereon.

(5) Subject to the provisions of this paragraph, the Board of Management may make standing orders for the regulation of its proceedings and business and may vary, suspend or revoke any such order.

*Functions of Former Undertaking*

6. Notwithstanding anything to the contrary contained in Part VII of the Order in Council, the only functions of the Former Undertaking shall be to—
- (a) assist the Governments of Zimbabwe and Zambia in the orderly dissolution of the Former Undertaking; and
  - (b) transfer to the Railways and the Zambia Railways such assets and liabilities as may be designated from time to time by the two Governments.

*Powers of Former Undertaking*

7. In the exercise of its functions in terms of paragraph 6 the Former Undertaking shall have the powers set out in Part II of this Schedule.

*Accounts and audit*

8. (1) The Board of Management shall cause proper accounts and other records in relation thereto to be kept and shall cause to be prepared in respect of each financial year a statement of accounts in such form as the Board of Management may direct.
- (2) The accounts of the Former Undertaking shall be audited by an auditor or auditors to be appointed from time to time by the Board of Management.
- (3) The auditors referred to in subparagraph (2) shall make a report to the Board of Management on the accounts examined by them and on the statement of accounts prepared for the financial year and the report shall state—
- (a) whether or not they have obtained all the information and explanations which they have required; and
  - (b) whether in their opinion the balance sheet contained in such statement of accounts is properly drawn up so as to exhibit a true and fair view of the state of the affairs of the Former Undertaking to the best of their information and the explanations given to them and as shown by the books of the Former Undertaking.
- (4) Every auditor of the Former Undertaking shall have a right of access at all times to the books and accounts and vouchers of the Former Undertaking and shall be entitled to require from the members of the Board of Management and officers of the Former Undertaking such information and explanations as may be necessary for the performance of the duties of the auditors.
- (5) In addition to making their report to the Board of Management the auditors shall be entitled to make to the Higher Authority any statement or explanations which they desire with respect to the accounts of the Former Undertaking which they have examined.

*Reports*

9. (1) The Board of Management shall as soon as possible after the end of each financial year submit to the Higher Authority a report dealing generally with the operation and dealings of the Former Undertaking during that year.
- (2) The report referred to in subparagraph (1) shall be accompanied by the statement of accounts referred to in paragraph 8 and the report of the auditors thereon.

*Investments*

10. Any sums of the Former Undertaking which are not immediately required for the purposes of its business may be invested by the Board of Management in such manner as it thinks proper.

*Headquarters of Former Undertaking and chief office of Board of Management*

11. (1) The headquarters of the Former Undertaking shall be at Bulawayo or at such other place as the Higher Authority may from time to time appoint.
- (2) The chief office of the Board of Management shall be situated at the headquarters of the Former Undertaking.

**PART II**

POWERS OF FORMER UNDERTAKING

1. To transfer to the Railways and the Zambia Railways the assets and liabilities referred to in subparagraph (b) of paragraph 6 of Part I.
2. To appoint and employ such secretarial staff in the office of the Board of Management as may be necessary and to discharge or dismiss staff not on secondment from the Railways.
3. To permit the Railways and the Zambia Railways to use the assets of the Former Undertaking prior to their transfer in terms of paragraph 1.

4. To employ and pay such legal practitioners, accountants, bankers or other professional advisers or agents as may be necessary.
5. To exercise any of the powers conferred upon it by a trust deed or the rules thereof relating to a pension scheme referred to in subsection (1) of section *forty-five* in relation to the amendment thereof.
6. To discharge or make such arrangements as may be necessary for the discharge of any liabilities of the Former Undertaking including the expenses of the Board of Management and to accept or make such arrangements as may be necessary for the acceptance of all sums due to, or made available to, the Former Undertaking and in pursuance of the foregoing to operate banking accounts.
7. To buy, sell or otherwise acquire or dispose of or to transfer or accept transfer of immovable property and to sign any necessary power of attorney or other document.
8. To cede, cancel or vary the terms of, and consent to, the substitution of debtors in, any mortgage bond passed in favour of the Former Undertaking and to agree to the release of any property from the operation of any mortgage bond in favour of the Former Undertaking.
9. To consent to the registration of servitudes against any immovable property mortgaged to the Former Undertaking.
10. To consent to the writing down and registration thereof in the Deeds Registry of any mortgage bond which has been passed in favour of the Former Undertaking and which has been reduced by the mortgagor.
11. To enter into, alter, vary or cancel any deed of servitude or agreement of lease.
12. To execute all such deeds or other documents for and on behalf of the Former Undertaking for use in the Deeds Registry as may from time to time be requisite or necessary.
13. Generally, to do all such things as are incidental or conducive to the performance of the functions of the Former Undertaking or are incidental to the powers specified in this Part.

### **THIRD SCHEDULE (Sections 2 and 45)**

#### REPEALED LEGISLATION

Rhodesia Railways Loan Guarantee Act, 1950 (No. 12 of 1950).  
Rhodesia Railways (E.C.A.) Loan Act, 1952 (No. 7 of 1952).  
Rhodesia Railways Project Loan (International Bank) Act, 1953 (No. 17 of 1953).  
Bulawayo Railway Act [Chapter 269 of 1963].  
Charter Railway Act [Chapter 271 of 1963].  
Deka River-Victoria Falls Railway Act [Chapter 272 of 1963].  
Gwanda Railway Validating Act [Chapter 274 of 1963].  
Gwelo-Umvuma Railway Deviation Act [Chapter 275 of 1963].  
Lo Mogundi Railway Act [Chapter 276 of 1963].  
Lo Mogundi Railway Extension Act [Chapter 277 of 1963].  
Mazoe Railway Act [Chapter 278 of 1963].  
Mazoe Railway Extension Act [Chapter 279 of 1963].  
Railway Accident Enquiry Act [Chapter 281 of 1963].  
Railway Construction Act [Chapter 282 of 1963].  
Railway Contractors Indemnity Act [Chapter 283 of 1963].  
Railway Extension (Arcturus and Sinoia) Act [Chapter 284 of 1963].  
Railways Transfer of Statutory Powers Act [Chapter 285 of 1963].  
Regulation of Railways Act [Chapter 286 of 1963].

## Law Development Commission, Zimbabwe

Rhodesia Railways Act [Chapter 287 of 1963].  
Right to Private Water (Railways) Act [Chapter 288 of 1963].  
Salisbury Railway Act [Chapter 290 of 1963].  
Shabani Railway Act [Chapter 291 of 1963].  
Umboe Railway Act [Chapter 293 of 1963].  
Umvukwe Railway Act [Chapter 294 of 1963].  
Victoria Railway Act [Chapter 295 of 1963].  
Victoria Railway Extension Act [Chapter 296 of 1963].  
Transport Services (Railways and Airways) (Transition) Act, 1967 (No. 15 of 1967).