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LAWS OF KENYA

THE KENYA RAILWAYS CORPORATION ACT

CAP. 397

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Kenya Railways Corporation Act

Cap. 397

Legislation as at 31 December 2022

Note: This Act was **repealed** on 2025-12-05 by Government Owned Enterprises Act (Act No. 25 of 2025).

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Repealed

KENYA RAILWAYS CORPORATION ACT
CAP. 397

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An Act of Parliament to provide for the establishment of a Corporation to be known as Kenya Railways, for the transfer to the Corporation of the undertakings of the East African Railways Corporation within Kenya, for the functions of the Corporation and for purposes connected therewith

Part I – PRELIMINARY

1. Short title

This Act may be cited as the Kenya Railways Corporation Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

"animals" means animate things of every kind except human beings;

"authorized employee" means an employee authorized by the Managing Director to exercise the powers or perform the duties in respect of which the expression is used;

"beacon" includes a light, mark or other structure erected by the Corporation for the purpose of navigation on inland waterways;

"booking office" means a place at which tickets may be obtained or charges paid to the Corporation;

"Chairperson" means the Chairperson of the Board appointed under section 4;

"charges" means all sums received or receivable, charged or chargeable, for, or in respect of, the carriage or warehousing of goods by the Corporation or for, or in respect of, any vessel or inland waterways port or any other service performed or facilities provided by the Corporation;

"consignee" means the person, firm or body to whom goods accepted for carriage by the Corporation are addressed;

"consignment" means one or more packages of goods or a quantity of loose goods tendered for carriage by one consignor to one consignee by the Corporation;

"consignor" means the person who has tendered goods which have been accepted for carriage by the Corporation;

Repealed

"customs law" means any law in force imposing or relating to the collection of customs or excise duties or transfer tax;

"employee" means any person in the service of the Corporation;

"fare" includes all sums received or receivable, charged or chargeable, for the carriage of a passenger by the Corporation;

"ferry" means any vessel plying from one side of a waterway to the other for the purpose of the carriage of passengers or goods;

"firebreak" means any strip of land, whether under trees or not, which has been cleared of inflammable matter to prevent the spread of fire, and which is not less than thirty feet (measured from the boundary of the land upon which a railway is constructed) in width, or of such other dimensions or sited at such places as may have been agreed upon between the Managing Director and the owner or occupier of the land contiguous to any land occupied by the Corporation on which a railway is constructed;

"free pass" means an authority in writing for the carriage by the Corporation without the payment of any fare of any person as a passenger;

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

"inland waterways ports" means the ports specified in the Third Schedule;

"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, 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 5;

"master", in relation to a vessel, means any person having charge of that vessel;

"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 which the Managing Director may by notice in the *Gazette* declare to be perishable goods;

"railway" means the whole or any portion of the lines of railway operated by the Corporation and all other movable and immovable property used, or placed at the disposal of the Corporation for use, in connection therewith;

"railway station" includes a road service station operated by the Corporation to serve the railway;

"rates" includes all sums which may, under the provisions of this Act, be levied for, or in respect of, the carriage or warehousing of goods by the Corporation or for, or in respect of, any vessel or inland waterways port or any other service performed or facility provided by the Corporation;

"season ticket" means a ticket entitling the person to whom it is issued to be carried by the Corporation as a passenger between the places specified thereon on the number of occasions or during the period specified thereon;

"Tariff Book" means the Tariff Book prepared and published in accordance with section 51;

"the purposes of the Corporation" means any purposes necessary or desirable for the performance of the services, or the provision of any facilities, which the Corporation is authorized to perform under this Act;

"ticket" includes a single ticket, a return ticket, a season ticket, and any other written authority (not a free pass) for the carriage of a person by the Corporation as a passenger;

"trains" includes locomotive engines, tenders, motors, coaches, wagons, trolleys and rolling stock of all kinds used, whether separately or in conjunction, on a railway;

"vehicle" means any vehicle other than a train or vessel;

"warehouse" includes any building, place, wagon, vessel or vehicle when used by the Corporation for the purpose of warehousing or depositing goods;

"watercourse" means any river, stream, drain, gully, canal or other channel, whether artificial or not, in which water flows whether constantly or intermittently;

"waterworks" includes boreholes, wells, reservoirs, dams, weirs, tanks, cisterns, conduits, aqueducts, pipes, hydrants, taps, pumps, engines and all other structures, plant and appliances used or constructed for obtaining, storing, purifying, conveying, distributing, measuring or regulating water.

(2) For the purposes of this Act, goods shall be deemed to be in transit from the time the goods are accepted by the Corporation for carriage until the expiration of twenty-four hours after the goods have arrived at the place to which, in respect of their carriage by the Corporation, the goods have been consigned, and thereafter the goods shall, so long as they remain in the custody of the Corporation, be deemed to be in such custody otherwise than for the purpose of carriage:

Provided that—

(i) where such goods are delivered to the consignee within the period of twenty-four hours, the goods shall cease to be in transit as from the time when they are delivered;

(ii) where such goods are perishable goods and the Corporation, in the exercise of its powers under this Act, disposes of those goods within the period of twenty-four hours, the goods shall cease to be in transit as from the time when they are so disposed of;

(iii) where the goods are, in respect of their carriage by the Corporation, consigned to a place at which the Corporation does not maintain any staff for the receipt thereof, the goods shall cease to be in transit as from the time when they arrive at such place;

(iv) where the goods are consigned for delivery to a place other than a railway station by means of a delivery service operating from a railway station or inland waterways port by the Corporation and such goods cannot, due to causes beyond the control of the Corporation, be delivered at such place within twenty-four hours after the time of their arrival at the railway station or inland waterways port from which the delivery service is operated, such goods shall cease to be in transit after the time when such goods are tendered for delivery at such place or after the expiry of twenty-four hours after the time of their arrival at the railway station or inland waterways port from which the delivery service is operated, whichever is the earlier.

(3) In this Act and in all documents issued under this Act, unless the context otherwise requires—

(a) "premises occupied by the Corporation" means premises vested in or placed at the disposal of the Corporation for the purpose of the Corporation;

(b) "property of the Corporation" means property vested in the Corporation for the purpose of the Corporation;

(c) "the possession of the Corporation" means the possession by any employee in the course of his duty;

(d) "carried by the Corporation" means carried by the Corporation in accordance with the provisions of this Act;

(e) "accepted by the Corporation" means accepted by an employee or agent of the Corporation for carriage or warehousing by the Corporation in accordance with the provisions of this Act:

Provided that acceptance shall not be deemed to have been effected until a document of receipt in respect of the goods accepted, signed by an authorized employee or agent of the Corporation, has been issued;

(f) "services or facilities provided by the Corporation" means services performed or facilities provided by the Corporation in accordance with the provisions of this Act;

(g) "operated by the Corporation" means operated by the Corporation in accordance with the provisions in this Act;

(h) "vessel or vehicle of the Corporation" includes a vessel or vehicle operated on behalf of the Corporation.

Part II – ESTABLISHMENT OF THE CORPORATION

3. Incorporation of Kenya Railways

(1) There shall be established a Corporation to be known as Kenya Railways, in this Act referred to as the Corporation.

(2) The Corporation shall be a body corporate with perpetual succession and a common seal and shall have power to sue and be sued in its corporate name and to acquire, hold and dispose of movable and immovable property for the purposes of the Corporation.

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

Part III – MANAGEMENT OF THE CORPORATION

4. Board of Directors

There shall be a board of directors of the Corporation in this Act referred to as the Board, which shall consist of—

(a) a Chairperson of the Board appointed by the Cabinet Secretary;

(b) the Managing Director;

(c) the Principal Secretary of the Ministry for the time being responsible for railways;

(d) the Principal Secretary to the Treasury;

(e) the managing director of the Kenya Ports Authority;

(f) not more than six persons, not being public officers or employees of the Corporation, to be appointed by the Cabinet Secretary by virtue of their knowledge of and experience in railways or transport matters or in commerce, industry, finance or administration generally.

[Act No. 11 of 1993, Sch.]

5. Managing director, deputy and secretary

(1) There shall be a Managing Director of the Corporation who shall be appointed by the Cabinet Secretary after consultation with the Board and whose terms and conditions of service shall be determined by the Cabinet Secretary in the instrument of appointment or otherwise in writing from time to time.

(2) The Board shall appoint a deputy managing director and a secretary of the Corporation whose terms and conditions of service shall be determined under sections 79 and 81.

6. Further provisions

The First Schedule shall have effect with respect to the constitution or organization of the Board and otherwise in relation thereto.

Repealed

7. Remuneration of directors

The Corporation shall pay to the directors such remuneration, fees or allowances for expenses as may be determined by the Cabinet Secretary:

Provided that no remuneration, fees or allowances for expenses shall be paid to any director who is a public officer in receipt of a salary.

Part IV – FUNCTIONS AND POWERS OF THE CORPORATION

8. General duty of the Board

(1) It shall be the duty of the Board to provide a co-ordinated and integrated system within Kenya of—

(a) rail and inland waterways transport services;

(b) port facilities in relation to inland waterways transport services; and

(c) auxiliary road services in connection therewith.

(2) The performance of the duty referred to in subsection (1) shall include a general duty to secure—

(a) the fullest development, consistent with economy, of the undertaking of the Corporation;

(b) that the undertaking of the Corporation is operated efficiently, economically and with due regard to safety;

(c) that the financial administration of the Corporation is conducted in accordance with Part V;

(d) that the Corporation provides all reasonable facilities for the carriage of passengers and goods; and

(e) that no particular person or body is given undue preference or subjected to any undue disadvantage.

[Act No. 5 of 2005, s. 2.]

9. Management

Subject to this Act, the control and executive management of the Corporation shall be vested in the Managing Director.

10. Powers of the Managing Director

Subject to the directions of the Board, the Managing Director may—

(a) establish and operate rail, road and inland waterways transport services and facilities relating thereto;

(b) approve recurrent expenditure within limits determined by the Board;

(c) approve any individual capital work of which the estimated cost does not exceed four hundred thousand shillings or such other sum as the Cabinet Secretary may, from time to time, by order, determine;

(d) approve any alteration in salaries, wages or other terms and conditions of service of employees of the Corporation not involving expenditure in excess of the limits determined by the Board within its powers under paragraph (b) of section 11;

(e) approve any alteration in the establishment of the Corporation other than an alteration involving a major reorganization or a substantial reduction in the number of employees; and

(f) allocate functions to employees.

11. Powers of the Board

In the exercise of its duty under section 8, and subject to any directions of a general nature which may be given to it by the Cabinet Secretary, and to any agreement which may be subsisting entered into pursuant to section 11A, the Board may—

(a) approve any minor alteration in tariffs, rates, fares and other charges;

(b) approve any minor alteration in salaries, wages or other terms and conditions of service of employees of the Corporation;

(c) approve any individual capital work for the purpose of the Corporation, not included within a programme of works approved by the Cabinet Secretary, of which the estimated cost does not exceed five million shillings or such other sum as the Cabinet Secretary may, from time to time, by order, determine;

(d) establish, from among its members, committees for the purpose of the Corporation and delegate functions thereto;

(e) consider legislative proposals and recommend their enactment to the Cabinet Secretary;

(f) approve any alteration in organization or establishment of the Corporation other than an alteration referred to in section 10(e); and

(g) give directions to the Managing Director.

[Act No. 5 of 2005, s. 3.]

11A. Concessioning of the railways

(1) Notwithstanding any other provision of this Act, the Board may enter into an agreement with a person appointed in accordance with this section, for the performance of any of its functions or the exercise of any of its powers under this Act by that person.

(2) An agreement under subsection (1) may take the form of a concession, lease or management contract.

(3) The Board shall appoint the person for the purposes of an agreement under this section (hereafter referred to as "the appointed person") through competitive tendering in accordance with the law for the time being applicable to the procurement of public services.

(4) An agreement under this section shall—

(a) be subject to the approval of the Cabinet Secretary;

(b) specify the functions or powers of the Board to be performed or exercised, as the case may be, by the appointed person and those to remain the responsibility of the Board during the term of the agreement;

(c) set out the terms and conditions applicable to the transfer of any of the employees of the Corporation recruited by the appointed person for the purposes of the agreement; and

(d) without prejudice to the generality of paragraph (b), provide for the operation, maintenance, rehabilitation and development of the railway and associated infrastructure of the Corporation.

(5) Where a function or power of the Board is conferred on the appointed person by virtue of an agreement under this section, the performance of the function or the exercise of the power by that person shall be deemed to be under the authority of this Act.

[Act No. 5 of 2005, s. 4.]

Repealed

12. Powers of the Cabinet Secretary

The Cabinet Secretary may, subject to any agreement entered into pursuant to section 11A—

(a) give directions of a general nature to the Board relating to the operation of the undertaking of the Corporation;

(b) in consultation with the Cabinet Secretary responsible for finance, approve any major alteration in the tariffs, rates, fares and other charges made for the services provided by the Corporation;

(c) approve any major alteration in salaries, wages or other terms and conditions of service of employees;

(d) in consultation with the Cabinet Secretary responsible for finance, approve any individual capital work, for the purposes of the Corporation, of which the estimated cost exceeds five million shillings;

(e) give particular directions to the Board concerning any matter involving agreement with, or the interest of, any other country or territory;

(f) determine the limits of minor alterations for the purposes of paragraphs (a) and (b) of section 11.

[Act No. 5 of 2005, s. 5.]

13. Powers of the Corporation as a statutory body

(1) Without prejudice to section 11A, the Corporation shall have power—

(a) to carry goods and passengers by rail, road and inland waterways within Kenya;

(b) to provide and use upon the inland waterways within and contiguous to Kenya vessels—

(i) for the towage, protection or salvage of life and property;

(ii) for the carriage of goods and passengers;

(c) to store goods within Kenya, whether or not such goods have been, or are to be, carried by the Corporation;

(d) to consign goods on behalf of other persons from any place within Kenya to any other place whether within Kenya or elsewhere;

(e) to provide within Kenya, both for the passengers carried by the Corporation and other persons, hotels, other living accommodation and places of refreshment;

(f) to provide within Kenya such other amenities or facilities for passengers carried by the Corporation and other persons making use of the services performed or the facilities provided by the Corporation as may appear to the Board necessary or desirable.

(2) Subject to this Act, the powers conferred by subsection (1) shall include all such powers as are necessary or advantageous and proper for the purposes of the Corporation and in particular, without prejudice to the generality of the foregoing, shall include power—

(a) to construct or improve any railway, inland waterways port, ferry, road, bridge, building or any other necessary or desirable works required for the purposes of the Corporation;

(b) to operate trains and to acquire, construct, manufacture, maintain or repair anything required for the purposes of the Corporation;

(c) to carry on any business necessary or desirable to be carried on for the purposes of the Corporation and to act as agent for any services of the Government in the provision of any agreed function;

(d) to acquire, construct, manufacture, maintain or repair waterways or electric generating plant or any other works, plant or apparatus necessary or desirable for the supply or transmission of water or of electric energy for the purposes of the Corporation and to supply any such water or electric energy to any person;

(e) subject to the approval of the Cabinet Secretary in charge thereof, to alter the course of, or raise or lower the level of, any watercourse or road if such alteration, raising or lowering is necessary for the purposes of the Corporation;

(f) 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;

(g) 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, vessel, vehicle or goods within any inland waterways port or on any premises occupied by the Corporation for the purposes of the Corporation;

(h) to sell, let or otherwise dispose of any property, movable or immovable, which in the opinion 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 or land placed at its disposal by the Government otherwise than with the consent of, and on conditions agreed by, the Government;

(i) to provide houses and other accommodation for employees;

(j) to act as 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 complementary to, those performed or provided by the Corporation;

(k) to enter into agreements 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 payment, collection or apportionment of any fares, rates, charges or other receipts arising 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 interest or the retention of any stocks, shares or securities or otherwise;

(l) 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;

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

(n) 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 they 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 of the facilities or equipment maintained by the other;

(ii) the temporary employment of staff of one party 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 with any existing service or facility provided by either party or in relation to any service or facility under consideration; and

(vi) the joinder in the arrangement or agreement by any other person.

(3) For the avoidance of doubt it is hereby declared that subsections (1) and (2) relate only to the capacity of the Corporation as a statutory corporation and nothing in those provisions shall be construed as authorizing the disregard by the Corporation of any law.

(4) The powers conferred on the Corporation under this section to construct or execute any work shall empower the construction or execution of such works on land vested in the Corporation or on land placed at its disposal by the Government for the purposes of the Corporation or, 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, and where any land is required by the Corporation for the purposes of the Corporation, the Corporation shall proceed in accordance with section 14.

[Act No. 5 of 2005, s. 6.]

14. Acquisition of land for the purposes of the Corporation

(1) Where land is required by the Corporation for the purposes of the Corporation, it may either—

(a) if such land is not public land, acquire such land through negotiation and agreement with the registered owner thereof:

Provided that, notwithstanding the provisions of section 6 of the Land Control Act (Cap. 302), the ensuing transaction shall not require the consent of a land control board if the land to be acquired is agricultural land; or

(b) if such land is public land, or if the Corporation is unable to acquire it by agreement in accordance with paragraph (a) of this subsection, notify the Cabinet Secretary responsible for public lands that the land specified in the notice is required for the purposes of the Corporation.

(2) When notice has been given under subsection (1)(b), then—

(a) if the land is public land, the Cabinet Secretary responsible for Lands may, in his discretion and upon such terms and conditions as he may think fit, place such land at the disposal of the Corporation for the purposes of the Corporation;

(b) if the land is not public land, any provision in any written law which empowers the President or the Cabinet Secretary responsible for Lands to acquire or direct the acquisition of such land for any specific purpose shall be deemed to include a power enabling the President or the Cabinet Secretary responsible for lands to acquire or direct the acquisition of such land for the purposes of the Corporation.

(3) Where any compensation is payable to any person in respect of any land specified in the notice given under subsection (1)(b) acquired by the President or the Cabinet Secretary responsible for lands, and such land after being so acquired is placed at the disposal of the Corporation in

accordance with subsection (2)(a), the amount of the compensation payable to that person, in accordance with the provisions of the law under which the land was acquired, shall be paid by the Corporation.

(4) The Corporation may at any time convey, transfer or surrender any land surplus to both its existing and future requirements by a conveyance or a deed of surrender either for, or without, consideration:

Provided that land which was public land or trust land shall be surrendered to the Government and shall not be conveyed or transferred to any other person unless the Cabinet Secretary responsible for lands shall consent and so direct.

(5) The provisions of subsection (4) shall apply to land vested in the Corporation by any written law, including this Act, as well as to land conveyed to it or otherwise placed at its disposal.

(6) In this section—

"public land" means all public land in Kenya, excluding trust land, which is vested in the Government for public purposes or for the purposes of the Corporation or its predecessors in title, and for the purposes of the proviso to subsection (4) includes land previously so vested;

"trust land" means land which is or which was previously vested in a County Council by virtue of section 115 of the Constitution or any previous written law.

15. Power to enter land to survey, etc.

(1) Any authorized employee of the Corporation may, for the purposes of the Corporation, enter upon —

(a) any land and survey such land or any portion thereof;

(b) any land contiguous to any land occupied by the Corporation and—

(i) excavate, take away and use any earth, stone, gravel or similar materials out of such land;

(ii) cut, take away and use any timber on such land.

(2) Where any materials or timber are taken away in, or any damage is caused by reason of, the exercise of the powers conferred by this section, the owner or occupier of the land shall be entitled to compensation therefor in accordance with this Act.

16. Power to enter land to prevent accidents, etc.

(1) The Corporation, or any authorized employee, may, for the purpose of preventing the occurrence of any accident, preserving the safe operation of any transport services provided by the Corporation or repairing any damage caused by any accident, enter upon any land and—

(a) cut down or remove any tree or other obstruction not being a building, which obscures the view of any fixed signal or beacon or which is likely to cause any obstruction or danger to any such transport service; and

(b) execute such other works as may be necessary to prevent the occurrence of any accident or to repair any damage caused as a result of any accident.

(2) If any tree or other obstruction cut down or removed under subsection (1)(a) came into existence subsequent to the transport services being provided at that place then no compensation shall be payable in respect of such entry or the cutting down or removal of such tree or other obstruction.

(3) Where any person erects any building which obscures the view of a fixed signal or is likely to cause any obstruction or any danger to any rail or transport service provided by the Corporation, the Corporation may, unless such person has previously obtained the approval of the Managing Director to the erection of such building or has modified it to the satisfaction of the Managing

Director, apply to a judge of the High Court for an order for the demolition or modification of such building or, as the case may require, for the payment of the Corporation of the cost incurred in resiting or replacing any signalling or other equipment which is necessary to prevent such obstruction or danger and the court, at its discretion, may grant such order and may make such order as to the payment of compensation and costs as it thinks fit.

17. Power to enter land to alter position of pipes, etc.

(1) Subject to this section the Corporation, or any authorized employee may, for the purposes of the Corporation, enter upon any land and alter the position of any pipe for the supply of gas, oil, water or compressed air or the position of any electric telephone or telegraphic wire or the position of any drain.

(2) Where the Corporation intends to exercise any power under subsection (1), it shall give reasonable notice of its intention so to do to the authority or person having control of the pipe, wire or drain and—

(a) such authority or person may authorize a representative to superintend such work and may require the Corporation to execute such work to the satisfaction of such representative;

(b) the Corporation shall make arrangements for the maintenance of the supply of gas, oil, water, compressed air or electricity, for the continuance of the telephone or telegraph communications or for the maintenance of the drainage, as the case may be, during the execution of such work.

(3) Where any damage is caused by reason of the exercise of the powers conferred by this section, the person suffering such damage shall be entitled to compensation therefor in accordance with this Act.

(4) This section shall not apply to any oil pipeline owned or operated by the Kenya Pipeline Company Limited.

18. Power to take water

The Corporation may, for its purposes, take any water from any natural watercourse subject—

(a) if there is any law regulating the taking of any such water, to the provisions of that law;

(b) if there is no such law, to the approval of the Cabinet Secretary responsible for water development.

19. Provision of transport services, etc., other than by the Corporation

Except with the consent of the Cabinet Secretary and subject to the right of the Government to provide and operate transport services, other than the carriage of passengers or goods for hire or reward, for its own purposes—

(a) no rail transport services shall be provided; and

(b) no railway shall be constructed for the carriage thereon of goods or passengers for reward,

within Kenya by any person other than the Corporation or a person appointed in accordance with section 11A, or, to the extent permitted by law, the Kenya Ports Authority.

[Act No. 5 of 2005, s. 7.]

20. Accommodation works

Where, in the exercise of powers under this Act, the Corporation constructs a railway, then, during the construction of the railway or as soon as practicable thereafter, it shall construct and maintain the

following accommodation works for the benefit of the owners and occupiers of lands adjoining those on which the railway is constructed—

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

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

Provided that—

(i) nothing in this section shall require the construction or the maintenance of any accommodation works—

(a) in such a manner as to prevent or obstruct the proper operation of the railway;

(b) where the owners or occupiers, or their predecessors in title, of the lands have received an agreed amount of compensation in consideration of such works not being constructed or maintained; or

(c) at any time after a period of five years from the date on which the railway passing through the lands was first opened for the public carriage of passengers or goods; and

(ii) 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 Corporation, then, the Corporation shall not be required to construct other accommodation works for the crossing of the road or watercourse.

21. Additional accommodation works

If any time—

(a) the owner or occupier of any lands on which a railway is constructed desires any accommodation works in addition to those, if any, constructed by the Corporation under section 20; or

(b) any authority proposes to construct a public road or any other works across a railway,

then the owner, occupier or authority, as the case may be, may require the Corporation to construct such accommodation works—

(i) as may be agreed between the Corporation and the owner, occupier or authority; or

(ii) if no such agreement is reached, as may be determined by the Cabinet Secretary,

and the cost of constructing such accommodation works shall be borne by the owner, occupier or authority requiring them.

22. Constructions of railway crossing public road

(1) Where, in the exercise of powers under this Act, the Corporation proposes to construct a railway across a public road, the Cabinet Secretary responsible for public lands may, subject to subsection (3), require the Corporation to construct the railway 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 Corporation shall comply with such requirements.

(2) Where any railway has been constructed so as to cross a public road on the level, the Cabinet Secretary responsible for public lands may, subject to subsection (3), require the Corporation—

(a) to erect such gates; or

(b) to raise or lower the level of the public road so that it crosses the railway 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 Corporation shall comply with such requirements.

(3) The Cabinet Secretary responsible for public lands shall, before making any requirement under this section, communicate with the Corporation and the authority responsible for the maintenance of such public roads and shall take into consideration any representations made by the Corporation or that authority.

(4) Where, as a result of a requirement made by the Cabinet Secretary responsible for public lands under this section, any works are to be constructed by the Corporation, 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 Corporation and the authority responsible for the maintenance of the public road, or if no such agreement is reached it shall be determined by the Cabinet Secretary.

23. Certification of a new railway

(1) Before any section of a new railway is declared open for the public carriage of passengers or goods, the Chief Engineer of the Corporation or such other qualified person as the Managing Director may appoint in that behalf shall furnish a certificate that such section complies with the standards laid down by the Corporation 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 upon such certificate being furnished, the Corporation may by notice in the *Gazette* declare the section to which the certificate refers to be open for such purposes.

(2) Nothing in subsection (1) shall prohibit the Corporation from carrying passengers or goods on a railway in the course of construction or before it has been so declared open but, in such case, the Corporation shall not be liable for the death of, or injury to, any passenger or for the loss of, or damage to, any goods occasioned in the course of such carriage.

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

Part V – FINANCIAL PROVISIONS

24. Principles of operation

(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 repayment 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 Cabinet Secretary 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 Cabinet Secretary 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 Cabinet Secretary 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.

25. Borrowing powers

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

(2) 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 Cabinet Secretary responsible for finance.

(3) Such stock issued under the provisions of subsection (1) and such moneys borrowed or credit obtained under the provisions of subsection (2) as the Cabinet Secretary 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.

(4) 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.

(5) 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.

Part VI – ACCOUNTS AND REPORTS

26. Annual accounts

(1) The Board shall ensure that proper accounts and other records are kept in relation to the revenue and expenditure of the Corporation and shall ensure that, within six months of the end of each financial year of the Corporation or such longer period as the Cabinet Secretary may allow in any particular case, a statement of accounts of the Corporation is prepared in accordance with the best commercial standards and any directions which may be issued by the Cabinet Secretary, and transmitted to the Auditor-General.

(2) The accounts of the Corporation and of all officers and authorities of the Corporation shall be audited by the Auditor-General and for that purpose the Auditor-General or any person authorized by him in that behalf, whether or not a public officer, shall have access to all books, records, returns and other documents relating to those accounts and upon receipt of a statement of accounts transmitted to him under subsection (1), the Auditor-General shall examine it, certify it and report

Repealed

on it and shall return the statement with his certificate and report to the Board within sufficient time to enable compliance with subsection (3).

(3) Upon the return of the statement of accounts certified by the Auditor-General and the receipt of his report thereon, the Board shall immediately transmit that statement of accounts and report to the Cabinet Secretary who shall cause the same to be presented to Parliament without delay and in any event before the expiry of nine months from the end of the financial year to which they relate or such longer period as the Cabinet Secretary may in any particular case allow.

[Act No. 12 of 1985, Sch.]

27. Annual report and financial year

(1) The Board shall, within nine months after the end of each financial year, prepare a report upon the operation of the Corporation during that year and shall transmit such report to the Cabinet Secretary who shall cause the same to be presented to Parliament together with the statement of accounts and report of the Auditor-General referred to in section 26.

(2) The financial year of the Corporation shall run from the 1st January to the 31st December in each year.

[Act No. 18 of 1986, Sch.]

Part VII – RESPONSIBILITY OF THE CORPORATION AS A CARRIER AND WAREHOUSEMAN

Responsibility as a Carrier

Passengers

28. Liability for loss of life, etc., of passengers

(1) The Corporation shall not be liable for the loss of life of, or for personal injury to, any passenger 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 Corporation or of any employee:

Provided that nothing herein shall impose upon the Corporation any liability from which it is exempt under this Act or any other written law.

(2) The Corporation shall not in any circumstances be liable for the loss of life of, or for personal injury to, any passenger—

(a) who is travelling, whether with or without permission, in any part of a train, vessel or vehicle other than parts normally provided for the use of passengers while travelling;

(b) who is travelling on a free pass;

(c) who is travelling over a railway in the course of construction whether with or without permission;

(d) who, at the time the loss of life or injury occurred, is being carried by any transport service other than one provided by the Corporation or under the control of the Board,

and to avoid liability in accordance with the provisions of this subsection it shall not be necessary for notice to be given to any such passenger of the conditions on which he travels and it shall be immaterial whether or not the passenger is an infant.

(3) The Corporation shall not be liable for the loss of life of, or for personal injury to, any passenger who is carried by the Corporation solely by vessel, or partly by train and vehicle and partly by vessel, when the loss of life or injury occurs during the carriage by vessel and arises from—

(a) act of God;

(b) act of war;

(c) fire or accident from machinery, boilers or steam;

(d) any peril or accident of the inland waterways, or navigation, of whatsoever nature or kind and from whatsoever cause arising,

but subject thereto and to any conditions expressed in the contract of carriage, the Corporation shall be liable for the loss of life or personal injury which occurs during the carriage by vessel, to the extent to which, as owner of such vessel, it would be liable under any law for the time being in force relating to merchant shipping (or to the limitation of liability for loss of life or personal injury upon a vessel in inland waterways) as if the vessel were subject to the provisions of such law and not to any greater extent; and where the Corporation seeks to avoid liability under this subsection, the burden of proving that any such loss of life or injury occurred during the carriage by vessel shall be upon the Corporation:

Provided that nothing in this subsection shall impose upon the Corporation any liability from which it is exempted under this Act or any other written law.

(4) For the purposes of this section the expression "passenger" includes every person, other than an employee on duty, lawfully travelling on any train, vessel or vehicle of the Corporation.

29. No liability for delay in arrival of passengers, etc.

The Corporation shall not be liable for any loss arising from the delay to any passenger caused—

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

(b) by the late starting or late arrival of any train, vessel or vehicle,

from whatever cause arising.

Goods

30. Liability for loss of goods

(1) Subject to this Act, the Corporation shall be liable for any loss or misdelivery of, or damage to, goods occurring while the goods are in transit from any cause whatsoever unless the Corporation proves that such loss, misdelivery or damage, arose from—

(a) act of God;

(b) act of war;

(c) seizure under legal process;

(d) act or order of the Government;

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

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

(g) 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 Corporation, or of any employee, to use reasonable foresight

and care in the carriage of goods, the Corporation shall not be relieved from liability for such loss, misdelivery or damage.

(2) The Corporation 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 46 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 Corporation 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 Corporation has been given;

(c) which at the time loss, misdelivery or damage occurred are being carried by any transport service other than one provided by the Corporation or under the control of the Corporation;

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

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

nothing in subsection (1) shall impose on the Corporation any liability from which it is exempted under this Act or any other written law.

(4) The Corporation shall not be liable for loss of, or damage to, goods carried by the Corporation solely by vessel, or partly by train and vehicle and partly by vessel, when the loss of, or damage to, goods carried by the Corporation occurs during the carriage by vessel and arises from—

(a) act of God;

(b) act of war;

(c) fire or accident from machinery, boilers or steam;

(d) any peril or accident of the inland waterways, or navigation, of whatsoever nature or kind and from whatsoever cause arising,

but subject thereto, and to any conditions expressed in contract of carriage, the Corporation shall be liable for any such loss or damage which occurs during the carriage by vessel to the extent to which, as owner of such vessel, it would be liable under any law for the time being in force relating to merchant shipping (or to the limitation of liability for loss, or damage to, goods upon a vessel in inland waterways) as if the vessel were subject to the provisions of such law and not to any greater extent; and where the Corporation seeks to avoid liability under this subsection, the burden of proving that any such loss or damage occurred during the carriage by vessel shall be upon the Corporation:

Provided that nothing in this subsection shall impose upon the Corporation any liability from which it is exempted under this Act or any other written law.

31. Liability for delay, etc., of goods

The Corporation 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 Corporation or any employee:

Provided that the Corporation 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 Corporation has been given;

(c) which at the time the delay, detention or deviation occurred are being carried by any transport service other than one provided by the Corporation or under the control of the Corporation;

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

(e) where the delay, detention or deviation arises from insufficient packing or address, riots, civil commotions, strikes, lock-outs, stoppage or restraints of labour from whatsoever cause whether partial or general.

32. Limitation of liability for animals

(1) The liability of the Corporation 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 Corporation 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 Corporation shall not in any case exceed the declared value.

(2) In every proceeding against the Corporation 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.

33. Limitation of liability for loss, etc., of specific articles

(1) The liability of the Corporation in respect of any article or articles specified in the Second Schedule, 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 Corporation 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 Corporation shall not in any case exceed the declared value.

(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.

(3) In any proceedings against the Corporation 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.

(4) The Cabinet Secretary may, by regulations made under this Act, amend the Second Schedule or vary amount of the maximum liability of the Corporation as specified in this section.

34. Limitation of liability for loss, etc., where false account given

The liability of the Corporation in respect of any goods carried by the Corporation in relation to which an account false in any material particular has been given under section 46 shall not in any case exceed the value of the goods as calculated in accordance with the description contained in such false account.

35. Limitation of liability by contract

(1) The liability of the Corporation under this Act for the carriage of goods by the Corporation shall not be limited in any manner otherwise than by contract made in accordance with the provisions of this section:

Provided that nothing in this section shall apply to a contract for the carriage of goods by vessel.

(2) A contract purporting to limit the liability of the Corporation under this Act for the carriage of goods by the Corporation shall, to the extent to which it purports to limit such liability but not otherwise, be void unless it is in writing signed by or on behalf of the person delivering the goods to the Corporation.

Responsibility as a Warehouseman

36. Liability for loss of goods, etc.

Subject to this Act, or any contract, the Corporation shall not be liable for the loss, misdelivery or detention of, or damage to, goods—

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

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

except where the loss, misdelivery, detention or damage is caused by the want of reasonable foresight and care on the part of the Corporation or of any employee:

Provided that—

(i) the Corporation shall in no case be liable for the loss, misdelivery, detention or damage arising from —

(a) act of God;

(b) act of war;

(c) seizure under legal process;

(d) act or order of the Government;

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

(f) fire, flood, tempest, riots, civil commotions, strikes, lock-outs, stoppage or restraint of labour from whatever cause whether partial or general;

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

(h) deficiency in the contents of unbroken packages; or

(i) insufficient packing or leakage from defective drums, containers or packages; and

(ii) where the loss, misdelivery, detention or damage occurs—

(a) in relation to goods accepted by the Corporation for carriage otherwise than while the goods are in transit, the limitation of the liability of the Corporation contained in sections 32, 33 and 34, or limited by any contract under section 35, shall continue to apply;

(b) in relation to goods accepted by the Corporation for warehousing, the limitation of the liability of the Corporation contained in section 34 shall apply.

37. Limitation of liability for loss, etc., of goods deposited in cloakroom

(1) The liability of the Corporation 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, such additional charge as may be determined in the Tariff Book

in respect of such excess value; and thereupon the liability of the Corporation 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 Corporation in connection with the transport services provided by the Corporation as a facility for the temporary deposit of goods by passengers and other persons.

Part VIII – OPERATIONS OF THE CORPORATION

Passengers and Luggage

38. Corporation may determine conditions for the carriage of passengers and luggage

(1) The Corporation may subject to this Act—

(a) determine the conditions upon which passengers and luggage shall be carried by the Corporation 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;

(b) determine the rates, fares and charges for the carriage of passengers and luggage by the Corporation 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, vessels or vehicles of the Corporation.

(2) Notwithstanding the provision of subsection (1), the Corporation 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 Corporation and such conditions, rates, fares and charges shall have immediate effect in relation to such case:

Provided that—

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

(ii) the determination of such conditions, rates, fares and charges shall not of itself constitute an undue preference under paragraph (e) of section 8(2).

39. General right of persons to be carried as passengers

Subject to the provisions of this Act, any person who has tendered to an authorized employee of the Corporation the proper fare for the ticket he desires shall be entitled to obtain such ticket and to be carried as a passenger by the Corporation 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—

(i) to be suffering from any mental disorder;

(ii) to be suffering from any contagious or infectious disease; or

(iii) 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.

Repealed

40. General conditions on which tickets, etc., issued

(1) Every ticket and free pass shall be issued by the Corporation 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, vessel or vehicle 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 or cabin to another of the same class for the purpose of the better use of the accommodation of the train or vessel; 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 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.

41. Persons without valid ticket, etc., may be removed from train, etc.

No person shall be upon any train, vessel or vehicle of the Corporation 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, vessel or vehicle 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 Corporation to leave the train, vessel or vehicle and, if he does not do so, may be removed therefrom with such force as may be reasonable and necessary in the circumstances.

42. Fares, etc., payable by persons travelling without a valid ticket, etc.

(1) Any person who—

(a) travels on any train, vessel or vehicle of the Corporation without a valid ticket or free pass; or

(b) being in, or having come from, any such train, vessel or vehicle 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 Corporation 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 or inland waterways port—

(i) from which the train, vessel or vehicle 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, vessel or vehicle higher than that for which he is in possession of a valid ticket or free pass; or

(b) travels in a train, vessel or vehicle 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 Corporation 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.

43. Conditions of carriage of luggage

(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 Corporation in the appropriate part of the train, vessel or vehicle and to receive a document of receipt for each piece of luggage so delivered.

(2) Luggage shall be carried by the Corporation 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.

Goods

44. Corporation may determine conditions for carriage of goods, etc.

(1) The Corporation may, subject to the provisions of this Act, determine the conditions upon which goods shall be carried or warehoused by the Corporation 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 Corporation may, in relation to the special circumstances of any particular case, determine conditions, rates and charges applicable to such case for the carriage or warehousing of goods by the Corporation or for any other service or facility and such conditions, rates and charges shall have immediate effect in relation to such cases:

Provided that—

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

(ii) the determination of such conditions, rates and charges shall not of itself constitute an undue preference under paragraph (e) of section 8(2).

Repealed

45. General right to have goods carried

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 Corporation, shall be entitled to receive a document of receipt for such goods and to have such goods carried by the Corporation in accordance with the conditions of carriage:

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

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

(ii) any goods tendered for carriage are goods to which section 50 applies;

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

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

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

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

(vii) 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 Corporation save, when such goods are accepted for carriage, under and in accordance with any special provisions dealing with the carriage of such goods.

46. Description, etc., of goods to be delivered

(1) The consignor of, or the person tendering, any goods to the Corporation 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 Corporation, 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 Corporation.

(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 Corporation 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 Corporation, 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 Corporation, 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.

Repealed

47. Goods may be sold to pay fares, rates, etc.

(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 Corporation 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 Corporation, any other goods of such person which may be in, or may thereafter come into, the possession of the Corporation.

(2) Where any goods have been detained under subsection (1), the Corporation 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 no imported goods shall be sold under this section until they have been entered for home consumption in accordance with the provisions of the customs laws.

(3) The Corporation 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 Managing Director 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 Corporation 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 Corporation to recover any such fare, rate or charge, or any part thereof, by any other lawful means.

48. Unclaimed goods in possession of the Corporation

(1) Where any goods in the possession of the Corporation are not claimed by the owner or person appearing to the Corporation to be entitled thereto, the Corporation 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.

(2) If—

(a) the owner of any goods in the possession of the Corporation 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 Corporation may, within a reasonable time not being less (except in the case of perishable goods) than three months, sell the goods and retain the proceeds of the sale thereof:

Provided that no imported goods shall be sold under this section until they have been entered for home consumption in accordance with the provisions of the customs laws.

Repealed

49. Indemnity where goods claimed by two persons, etc.

Where—

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

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

the Corporation may withhold delivery of the goods or proceeds until the person appearing to the Managing Director 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.

50. Dangerous or offensive goods, etc.

(1) No person shall take with him upon any train, vessel or vehicle of the Corporation or tender to the Corporation 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 or inland waterways port at which such person commences his journey; or

(b) in the case of goods tendered to the Corporation 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, vessel or vehicle of the Corporation;

(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, vessel or vehicle of, or from premises occupied by, the Corporation.

(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.

General

51. Corporation to prepare Tariff Book, etc.

(1) The Corporation 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 Corporation and such other matters as the Corporation 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 Corporation 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 Corporation.

52. Corporation shall determine maximum load, etc.

(1) The Corporation shall determine—

(a) the maximum load for every wagon of the Corporation and no wagon shall, except with the permission of the Managing Director, be loaded in excess of such maximum load;

(b) the maximum number of passengers that may be carried in any compartment of a coach of a train or cabin of a vessel or in a passenger lighter of the Corporation.

(2) The Managing Director shall cause the maximum load determined under subsection (1) in respect of every wagon to be shown in a conspicuous manner on each wagon.

Accidents

53. Accidents to be reported

Where any accident occurs in any transport service of the Corporation (other than a road transport service) or in any inland waterways port then if that accident—

(a) is attended, or is of a kind usually attended, with loss of human life or with serious injury to any person or property; or

(b) involves any collision between trains or between vessels, of which one is a train or vessel, as the case may be, carrying passengers; or

(c) involves the derailment of any train, or any part thereof, carrying passengers; or

(d) is of such other kind as the Cabinet Secretary may specify in directions given to the Managing Director,

the Managing Director shall, as soon as practicable, give notice of the occurrence of such accident to the Board and, in the case of any such accident involving injury to any person, also to the police station or administrative authority nearest to the scene of such accident.

54. The Board may order inquiry, etc.

(1) The Board may order such inquiry into any accident which occurs in any transport services of the Corporation, or in any inland waterways, or as it may think fit.

(2) The Board shall submit to the Cabinet Secretary a report on any accident of a kind referred to in section 53 setting out *inter alia* the probable cause of such accident and the steps, if any, which have been taken, or it has directed shall be taken, with a view to avoiding a repetition thereof.

55. Managing Director to make a return of accidents

The Managing Director shall make to the Board a return, in such form and at such intervals as the Board may direct, of all accidents occurring to the transport services of the Corporation, or in any inland waterways port, whether or not any such accident is attended with injury to any person.

Repealed

Part IX – SPECIAL PROVISIONS RELATING TO PORTS IN INLAND WATERWAYS

56. [Repealed by Act No. 4 of 2009, s. 454.]

57. [Repealed by Act No. 4 of 2009, s. 454.]

58. [Repealed by Act No. 4 of 2009, s. 454.]

59. [Repealed by Act No. 4 of 2009, s. 454.]

60. [Repealed by Act No. 4 of 2009, s. 454.]

61. [Repealed by Act No. 4 of 2009, s. 454.]

62. [Repealed by Act No. 4 of 2009, s. 454.]

63. [Repealed by Act No. 4 of 2009, s. 454.]

64. [Repealed by Act No. 4 of 2009, s. 454.]

65. [Repealed by Act No. 4 of 2009, s. 454.]

Part X – PROVISIONS RELATING TO OFFENCES

66. Major offences

(1) Any person who unlawfully—

(a) does any act which obstructs, or might obstruct, the working of a train, vessel 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, vessel, 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,

shall be guilty of 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 a vessel operated by the Corporation and with prejudice to the safe operation of such vessel, without lawful excuse disobeys any lawful order given to him as a member of the crew, or, at an inland waterways port or other place, unlawfully deserts his employment upon such vessel shall be guilty of an offence and liable to imprisonment for a term not exceeding three years.

67. Minor offences

Any person who—

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

(i) is found during the hours of darkness on any premises occupied by the Corporation;

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

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

(b) being on any premises occupied by the Corporation or upon any train, vessel or vehicle of the Corporation—

(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 offensive manner to the annoyance of any other person;

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

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

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

(vi) 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

(vii) smokes in any part of such premises, train, vessel 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 the Corporation or upon any train, vessel or vehicle of the Corporation;

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

(e) damages or without lawful excuse interferes with any property of the Corporation;

(f) without lawful excuse does any act which obstructs, or is likely to obstruct, the free navigation of any inland waterways port or the use of any wharf or dock therein;

(g) without lawful excuse enters or leaves any train, vessel or vehicle of the Corporation while it is in motion or elsewhere than at the place appointed by the Corporation 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 the Corporation 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 the Corporation 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) permits or allows any animal to stay on any premises occupied by the Corporation and properly fenced;

(l) 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, vessel or vehicle of the Corporation;

(m) wilfully obstructs or impedes an employee of the Corporation in the discharge of his duties;

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

(o) unlawfully removes any property of the Corporation;

(p) being an employee of the Corporation receives from any passenger or from any person delivering goods to the Corporation, 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;

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

(r) contravenes any direction given by a health officer under section 63 of this Act 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,

shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

68. Travelling without ticket, etc.

(1) Any person who—

(a) travels on a train, vessel or vehicle of the Corporation 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, vessel or vehicle of the Corporation beyond that distance with intent to avoid payment of the fare for the additional distance;

(c) travels on a train, vessel or vehicle of the Corporation 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) wilfully refuses to pay the fare and excess charge which, on demand, he is liable to pay under section 42; or

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

shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment and, in addition, shall be liable to a penalty equal to the fare and excess charge for which he is liable under section 42 or, in the case of an offence against paragraph (e) hereof, equal to the single fare for the journey and in the class which the offender has travelled, unless the offender has already paid such penalty to an authorized employee.

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

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

69. Offences by passengers

Any person who, being a passenger on any train, vessel or vehicle of the Corporation—

(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 any 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 40;

(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 persons of a different class or sex,

shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

70. Offences relating to tickets

Any person who—

(a) not being an authorized employee or agent of the Corporation, 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, vessel 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 the Corporation; or

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

shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

71. Forgeries, etc., of tickets

Any person who—

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

(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,

shall be guilty of 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 42.

72. False returns

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 shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment not exceeding three months or to both.

73. Unlawfully transporting dangerous goods

(1) Any person, who in contravention of the provisions of section 50—

(a) takes with him any goods to which that section applies upon any train, vessel or vehicle of the Corporation; or

(b) delivers any such goods to the Corporation for carriage or warehousing,

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.

(2) 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, vessel 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.

74. Offences by master of vessel

Any master of a vessel who contravenes, or permits to be contravened, any of the provisions of sections 58, 59, 62(1)(a) or 63(1) or who produces any document or gives any information which is false in any material particular, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

75. Employee endangering safety of operation

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,

shall be guilty of an offence and liable to imprisonment for a term not exceeding three years.

76. Employee demanding improper amount

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.

Repealed

77. Arrest of employee

(1) 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 such employee to relieve such 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.

(2) 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.

78. Power of arrest, removal and place of trial

(1) Any person who commits any offence mentioned in section 66, 67, 68, 69, 71 or 76 may be arrested without warrant by any authorized employee of the Corporation or police officer and shall thereupon, with the least possible delay, be taken before a magistrate having jurisdiction to try him or to commit him for trial.

(2) 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.

(3) Any person who commits any of the offences set out in section 67, 68, 69 or 73 may be required by any authorized employee of the Corporation or police officer to leave the premises occupied by the Corporation or the train, vessel or vehicle, as the case may be, in which such person is at the time of the commission of the offence and to remove any goods therefrom; and if such person fails to comply with such requirement he or such goods may be removed therefrom with such force as may be reasonably necessary in the circumstances.

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

(5) 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.

Repealed

Part XI – MISCELLANEOUS PROVISIONS

Staff

79. Appointment of staff

(1) Subject to the provisions this Act, the Board may appoint such employees as may be necessary for its efficient working under such terms and conditions, including conditions relating to discipline and dismissal, as it may think fit.

(2) The Managing Director may, by notice in writing, authorize any employee appointed under this section to maintain order upon any premises occupied by the Corporation or in any inland waterways port, train, vessel or vehicle of the Corporation and any employee so authorized shall, in the performance of such duty, have all the powers, rights, privileges and protection of a police officer.

(3) Every person who is employed in the undertaking of the East African Railways Corporation and who becomes an employee of the Corporation under section 95 shall be deemed to have been appointed to the service of the Corporation in accordance with this section.

80. Property of the Corporation in custody of employee, etc.

(1) Where any employee dies or leaves the service of the Corporation and, at the time of such death or termination of service, any property of the Corporation was in his possession or custody or any premises of the Corporation were occupied by him, it shall be the duty of such employee, or, in the event of his death, of the person in whose possession the property may be or who may be occupying such premises, as soon as practicable to deliver such property to the Corporation or to vacate such premises.

(2) If any property or premises to which subsection (1) refers is not delivered to the Corporation or vacated, the Managing Director shall give notice in writing to the person appearing to him most likely to be in possession of such property or in occupation of such premises to deliver to the Corporation such property or vacate such premises within such time as may be specified in the notice; and if such property is not so delivered or such premises are not so vacated within such time, the Managing Director may, without prejudice to any other means of recovery apply to a magistrate for an order empowering a police officer to enter and search any house or building where such property is believed to be and to deliver such property if found to the Corporation or, as the case may require, to evict from such premises any person found therein.

81. Regulations relating to staff

Subject to this Act, the Cabinet Secretary may make regulations generally relating to the conditions of service of employees and, without prejudice to the generality of the foregoing, may make regulations relating to—

(a) the grant of pensions, gratuities and other retiring allowances to employees and their dependants and the grant of gratuities to the estate or dependants of deceased employees;

(b) the establishment and maintenance of sick funds, superannuation and provident funds and the contributions payable thereto and the benefits receivable therefrom;

(c) the liability or otherwise to assignment, attachment, sequestration or other levy of sums payable to an employee or other persons under regulations made under this section.

Legal Provisions

Repealed

82. Delegation and signification

(1) The Board and the Managing Director may delegate to any person any of the powers vested in them under this Act and may grant to any person powers of attorney.

(2) Any act or decision, or notification thereof, of the Board or the Managing Director under this Act may be signified under the hand of an employee authorized for that purpose.

83. Compensation

(1) In the exercise of the powers conferred by sections 13, 15, 16 and 17, the Corporation shall do as little damage as possible, and where any person suffers damage no action or suit shall lie but he shall be entitled to such compensation therefor as may be agreed between him and the Corporation or in default of agreement, as may be determined by a single arbitrator appointed by the Chief Justice.

(2) Nothing in this section shall be construed as entitling any person to compensation—

(a) for any damage suffered unless he would have been entitled thereto otherwise than under the provisions of this section; or

(b) for any damage suffered as a result of the user of any works authorized under this Act unless such damage results from negligence in such user.

84. Liability for damage caused by fire

(1) The Corporation shall not be liable for any loss or damage caused by fire from any engine of the Corporation to any building, or any property therein, if any part of such building is within two hundred feet of the rails of any railway.

(2) Subject to subsection (1), the Corporation shall be liable for any loss or damage caused by fire from any engine of the Corporation where there is negligence in the working or the construction of such engine.

(3) Subject to subsection (1), the Corporation shall be liable for any loss or damage caused by fire from any engine of the Corporation without proof of any such negligence as is mentioned in subsection (2) if—

(a) such loss or damage is caused to the owner or occupier of any land which is contiguous with land occupied by the Corporation; and

(b) at the time of such loss or damage such owner or occupier maintained upon such land a firebreak in good condition; and

(c) where no firebreak in good condition was maintained at that time by the Corporation, such owner or occupier had given notice in writing of such fact to the Managing Director at least one month prior to the occurrence of such loss or damage; and

(d) the owner or occupier suffering any such loss or damage gives to the Managing Director—

(i) within fourteen days of the occurrence of such loss or damage, notice in writing thereof; and

(ii) within twenty-one days of the occurrence of such loss or damage, particulars in writing of his claim and of the loss or damage suffered by him:

Provided that the maximum compensation payable by the Corporation under the provisions of this subsection shall be two hundred thousand shillings.

Repealed

85. Burden of proof

In any proceedings against the Corporation for compensation under provisions of section 30, 31 or 36, it shall not be necessary for the person claiming compensation to prove how such loss, misdelivery, damage, detention, delay or deviation was caused.

86. Notice of claim

(1) No person shall be entitled to compensation for non-delivery of the whole of a consignment of goods, or of any separate package forming part of such consignment, accepted by the Corporation for carriage or warehousing unless a claim in writing, giving such particulars as may reasonably be necessary, is given to the Managing Director within six months of the date upon which such goods were accepted by the Corporation.

(2) No person shall be entitled to compensation for any goods missing from a packed or unpacked consignment of, or for misdelivery of, damage or delay to, detention of or deviation in the carriage of any goods accepted by the Corporation for carriage or warehousing unless—

(a) the Managing Director is notified of such fact in writing within four days of the date upon which such goods were delivered, or offered by the Corporation for delivery to the consignee or person entitled to take delivery thereof; and

(b) a claim in writing, giving such particulars as may reasonably be necessary, is given to the Managing Director within one month of such date.

(3) Where the person claiming compensation proves that it was impracticable for him to notify the Managing Director or give the Managing Director his claim as set out in subsections (1) and (2) within the time specified therein, and that such notification or claim was made or given in reasonable time, nothing in those subsections shall prejudice the right of such person to obtain compensation.

87. Limitation

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.

88. Restriction on execution against property of Corporation

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, vessels 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, vessels 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.

89. Overcharge and undercharge

(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 undercharge is 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 such 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 such 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 such refund.

90. Medical examination of persons claiming compensation

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 fit.

91. Service of notice, etc., on the managing director

Any notice or other document required or authorised under this Act to be served on the Corporation, or the Managing Director, may be served—

(a) by delivery of the notice or other document to the Managing Director or to any authorized employee; or

(b) by leaving it at the office of the Managing Director; or

(c) by sending it by post to the Managing Director.

Repealed

92. Service of notice, etc., by the managing director

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.

Regulations

93. Regulations

(1) The Cabinet Secretary may make regulations generally with respect to the services performed and the functions provided by the Corporation, for the maintenance of order on any premises occupied by the Corporation or in any inland waterways port or any train, vessel or vehicle of the Corporation and, without prejudice to the generality of the foregoing, with respect to—

(a) the proper control, management and protection of any such premises, train, vessel or vehicle and any property of the Corporation;

(b) the proper control and management of inland waterways ports and the entrances thereof, the prevention and removal of obstructions therein and the regulation of any work, service or facility performed or provided thereat;

(c) *deleted by Act No. 5 of 2007, s. 24;*

(d) the control of all persons on any such premises, the maintenance of order thereon and the admission or exclusion of persons therefrom;

(e) subject to the provisions of any written law—

(i) the taking of measures for the prevention of vessels from leaving any inland waterways ports if overloaded, improperly loaded, improperly found, insufficiently manned or without qualified officers or engineers or with a number of passengers in excess of the number that can be carried with reasonable safety or if otherwise unseaworthy;

(ii) the examination and certification of masters, mates and engineers of vessels engaged in trade upon inland waterways, tugs, dredgers, fishing boats and light craft and the charges and licence fees payable in respect thereof;

(iii) the registration, licensing, inspection and control of ferries, tugs, launches, hulks, fishing or ferry boats or other craft upon inland waterways, the charges to be paid therefor and the number of passengers to be carried therein; and

(f) the protection of vessels and cargoes and the removal, destruction, sale or abandonment of stranded vessels and their cargoes and appurtenances which obstruct or are likely to obstruct the fairway of any inland waterways port, the payment of expenses in connection therewith and the levy and recovery of a rent for the right of a hulk or wreck or wreckage to lie in any inland waterways port.

(2) The power of the Cabinet Secretary to make regulations under this section in relation to any matter shall not be construed as derogating from any other power conferred upon him under this Act to make provision in relation to any such matter in any different manner.

[Act No. 5 of 2007, s. 24]

Repealed

Part XII – APPLICATION OF LAWS OF THE COMMUNITY, TRANSITIONAL, SAVINGS, ETC.

94. Application of Community laws

(1) Part V of the East African Railways Corporation Act shall cease to have the force of law in Kenya, except in relation to things done or falling to be done in respect of Kenya before the commencement of this Act.

(2) All regulations and orders made or deemed to be made under section 84 or 96 or any other provision of the East African Railways Corporation Act shall, insofar as they apply to Kenya or to the East African Railways Corporation in Kenya or to any employee of the East African Railways Corporation who continues in the service of the Corporation under or by virtue of section 95, continue in force with necessary adaptations with respect to Kenya and to the Corporation and to any employee thereof and shall be deemed for all purposes to have been made under this Act (both in respect of service occurring, or anything done or failing to be done, before as well as after the commencement of this Act) and may be modified or revoked by the Cabinet Secretary under the corresponding provision of this Act accordingly.

(3) The Cabinet Secretary may by order made and laid before the National Assembly within six months from the commencement of this Act adapt or modify any law of the Community relating to any subject or matter for which provision or to which reference is made in this Act.

(4) This Act shall apply notwithstanding any Community or other written law.

95. Transitional and savings

(1) Every contract made by or on behalf of the East African Railways Corporation which at the commencement of this Act falls wholly to be performed within Kenya shall, whether or not in writing and whether or not otherwise assignable in law by either party, have effect on and after the commencement of this Act as if made by or on behalf of the Corporation with the other party or parties thereto and as if references therein to the East African Railways Corporation or any employee or authority thereof were references to the Corporation or the corresponding employee or authority of the Corporation.

(2) All the liabilities at law of the East African Railways Corporation which at the commencement of this Act fall wholly to be discharged within Kenya shall thereupon by virtue of this section and without further assignment become the liabilities of the Corporation.

(3) Notwithstanding anything in subsections (1) and (2), the liabilities of the East African Railways Corporation in respect of any money borrowed by it under section 28 of the East African Railways Corporation Act or in respect of any stock issued by that Corporation or charged upon its property shall not become a liability of the Corporation under those subsections but may be dealt with by orders made under subsection (4).

(4) The Cabinet Secretary may, from time to time, after the commencement of this Act by order declare that any property of the East African Railways Corporation or any liabilities or contracts of that Corporation to which subsections (1) and (2) do not apply, or any part or proportion thereof, shall, on a day to be specified in the order, become property, liabilities or contracts of the Corporation subject to such terms or provisions as may be specified in the order, and all such orders shall take effect in Kenya according to their terms.

(5) All legal proceedings pending in Kenya by or against the East African Railways Corporation in respect of any property, liabilities or contracts which become property, liabilities or contracts of the Corporation under this section shall be deemed to continue or be continued by or against the Corporation.

(6) The Tariff Book and all directions, orders, rules, authorizations and other things published, made, given or done by the East African Railways Corporation under the East African Railways Corporation Act, or any subsidiary legislation thereunder, subsisting at the commencement of this Act, shall on and after that day be deemed to have been published, given, made or done by the Corporation.

(7) Every person who at the commencement of this Act is an employee of the East African Railways Corporation resident and serving in Kenya (not then being under notice of dismissal or resignation) shall on that day and subject to this Act become an employee of the Corporation on the same terms and conditions.

(8) Every public officer having the power or duty to effect or amend any entry in a register relating to property, or to issue or amend any certificate or other document affecting or evidencing title to property, shall, without payment of fee or other charge and upon request made by or on behalf of the Corporation, do all such things as are by law necessary to give final effect to the transfer of property mentioned in any order made under subsection (4).

(9) Subject to subsection (10), in this section liabilities and contracts which fall wholly to be discharged or performed in Kenya shall include liabilities and contracts in respect of—

(a) goods or services received and utilized or due to be received and utilised in Kenya by the East African Railways Corporation;

(b) a cause of action in tort which arose in Kenya;

(c) only such judgements obtained in Kenya before the commencement of this Act as arise out of liabilities or contracts within subsection (1) or (2).

(10) A liability or contract shall not be deemed to fall wholly to be discharged or performed in Kenya merely by reason of the headquarters of the East African Railways Corporation being or having been in Kenya.

(11) Notwithstanding the provisions of this section, subject to any order made by the Cabinet Secretary under subsection (4) and to the provisions of subsection (7), no liability arising out of any contract of employment entered into by the East African Railways Corporation with any person who is not a citizen of Kenya at the commencement of this Act, including any liability for any retirement or other benefits, shall become a liability of the Corporation.

(12) Notwithstanding anything in this section or in any written law, it shall be lawful for the Corporation pending the vesting of any property by orders made under subsection (4) to manage, operate, use and deal with the property of the East African Railways Corporation in Kenya for any of the purposes of the Corporation as if such property were the property of the Corporation and as if the provisions of this Act applied thereto, but subject to such provisions with regard to that user, including provisions for any financial adjustments or arrangements, as the Cabinet Secretary may from time to time direct; and the Corporation shall have power, subject to any such direction of the Cabinet Secretary, to have recourse to any such property and income arising therefrom for the purpose of meeting any liabilities or obligations of the Corporation or of the East African Railways Corporation, whether or not liabilities or obligations assumed by the Corporation under this section.

96. Contracts, etc. on behalf of Corporation before commencement of this Act

(1) Any contract made and any act or thing done or purported to be made or done or any act or thing omitted to be done in Kenya on behalf of or in the name of Kenya Railways prior to the incorporation of the Corporation under this Act by any person acting in good faith and with due or apparent authority in that behalf shall be deemed to be a contract, act or thing made or done or an act or thing omitted to be done, as the case may be, by the Corporation under this Act.

(2) The times for notices and claims under section 86 or 89 and the periods of limitation set out in section 87 shall, in respect of any claim, action or legal proceedings arising out of any of the matters covered by subsection (1), commence from the date of the commencement of this Act.

FIRST SCHEDULE [s. 6]

PROVISIONS AS TO THE BOARD AND THE CORPORATION

1. Tenure of office

   The Chairperson 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 re-appointment.

2. Vacation of office

   Each director mentioned in the preceding paragraph may—

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

   (b) be removed from office by the Cabinet Secretary 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

      (iii) is otherwise unable or unfit to discharge his functions.

3. Deputies

   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.

4. Meetings

   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 Chairperson shall appoint:

   Provided that the Board shall meet not less than six times in any financial year.

5. Notice of meetings

   The Chairperson 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.

6. Special meetings

   Except where a shorter period is appointed under paragraphs 4 or 5 of this Schedule, 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.

7. Quorum

   The quorum necessary for the transaction of business by the Board shall be five.

8. Chairperson

   The Chairperson 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 Chairperson during the Chairperson's absence from that meeting.

9. Voting

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 Chairperson of the meeting shall have a second or casting vote.

10. Minutes

The Board shall cause minutes to be kept of all resolutions and proceedings at each meeting and of the directors present thereat.

11. Other procedures

Subject to the provisions of 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.

12. Disclosure of interest

(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.

13. The common seal

The affixing of the common seal of the Corporation shall be authenticated by the signatures of the Chairperson or some other director authorized generally or specially by the Board to act for the purpose, and of an employee of the Corporation authorized generally or specially by the Board to act for the purpose.

14. Contracts and instruments

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 authorized by it for that purpose.

15. Proof of documents

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.

Repealed

SECOND SCHEDULE [s. 33]

SPECIFIED ARTICLES

(a) Gold, silver and other precious metals, coined or uncoined, manufactured or unmanufactured, and any coins, whether made of gold, silver or any other metal.

(b) Precious or semi-precious stones, jewellery and trinkets.

(c) Watches, clocks and timepieces of any description.

(d) Government securities.

(e) Stamps.

(f) Bills of exchange, promissory notes, bank-notes, currency notes and orders or other securities for payment or money.

(g) Maps, plans, writings and title-deeds.

(h) Paintings, engravings, lithographs, pictures, photographs, carvings, statuary, sculpture, antique furniture and other works of art.

(i) Art pottery, glass, china and marble.

(j) Cameras and cinematograph apparatus (including films).

(k) Lace, furs and feathers.

(l) Opium and narcotic preparations.

(m) Musk, sandalwood oil and other essential oils used in the preparation of perfumes.

(n) Pyrethrum extract.

(o) Musical and scientific instruments, wireless and television sets, radiograms, record players, tape recorders and all electronic instruments and equipment.

(p) Ivory in any form.

(q) Any article the value of which exceeds Sh. 20,000 per ton.

THIRD SCHEDULE [ss. 2, 56]

INLAND WATERWAYS PORTS

Asembo Bay

Homa

Kowuor

Mbita Point

Repealed

Homa Bay	Mfangano
Kadimu	Mohoru Bay
Karungu	Port Victoria
Kendu Bay	Sindo
Kisumu	Sio