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1

Government Notice

Goewermentskennisgewing

DEPARTMENT OF GOVERNMENTAL AFFAIRS

DEPARTEMENT VAN OWERHEIDSAKE

No. 162

1987

No. 162

1987

PROMULGATION OF ACT OF NATIONAL ASSEMBLY

AFKONDIGING VAN WET VAN NASIONALE VERGADERING

The following Act, which has been adopted by the National Assembly and signed by the Administrator-General in terms of the South West Africa Legislative and Executive Authority Establishment Proclamation, 1985 (Proclamation R.101 of 1985), is hereby published in terms of section 18 of that Proclamation: —

Die volgende Wet, wat ingevolge die Proklamasie op die Instelling van Wetgewende en Uitvoerende Gesag vir Suidwes-Afrika, 1985 (Proklamasie R.101 van 1985), deur die Nasionale Vergadering aangeneem en deur die Administrateur-generaal onderteken is, word hierby afgekondig ingevolge artikel 18 van daardie Proklamasie: —

No. 21 of 1987: National Transport Corporation Act, 1987.

No. 21 van 1987: Wet op die Nasionale Vervoerkorporasie, 1987.

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**NATIONAL TRANSPORT
CORPORATION ACT, 1987****ACT**

To provide for the establishment of a Corporation with the power to take over and continue the management, control, maintenance, exploitation, rendering and promoting of transport services in the territory in terms of the provisions of this Act; and for matters incidental thereto.

*(English text signed by the Administrator-General on
10 September 1987)*

BE IT ENACTED by the National Assembly, as follows: —

Definitions.

1. In this Act, unless the context otherwise indicates —

- (i) “accounting records”, in relation to the Corporation, includes notes, deeds, memoranda, minutes, accounts, statistics, and other documents; (xii)
- (ii) “area of jurisdiction of the Corporation” means all property, including stations, sidings, buildings, equipment, machinery, rolling stock, road transport service vehicles, aircraft, harbour vessels and all other movable or immovable property and servitudes used in connection with the railway, harbours, road transport services, pipeline services and air transport services, and, in relation to harbours, includes an area defined in the First Schedule to this Act, unless and until amended by the Cabinet by notice in the *Official Gazette*; (xiv)
- (iii) “Assembly” means the National Assembly constituted under section 2 of the South West Africa Legislative and Executive Authority Establishment Proclamation, 1985 (Proclamation R.101 of 1985); (xxi)
- (iv) “bearer stock” means any stock of the Corporation in respect of which a certificate is issued by the Corporation stating that the bearer of the certificate shall be entitled to the stock specified therein; (xix)
- (v) “board” means the board of directors established under section 7; (xi)
- (vi) “Cabinet” means the Cabinet constituted under section 23 of the South West Africa Legislative and Executive Authority establishment Proclamation, 1985 (Proclamation R.101 of 1985); (vii)
- (vii) “chairman” means the chairman or acting chairman referred to in section 10; (xxiii)
- (viii) “Companies Act” means the Companies Act, 1973 (Act 61 of 1973), as amended from time to time; (ix)

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- (ix) "Corporation" means the National Transport Corporation Limited established by section 2; (viii)
- (x) "director" includes any person occupying the position of director of the Corporation, by whatever name he may be known; (iii)
- (xi) "foreign country" means the Republic of South Africa, any state, country, colony or territory other than the territory of South West Africa; (xxv)
- (xii) "free pass" means an authority in writing issued by the Corporation or by an employee of the Corporation authorized thereto, to the person to whom it is issued, to travel as a passenger in or on any train or coach under the control of the Corporation, without the payment of any fare; (xxvi)
- (xiii) "harbour" means the harbour of Lüderitz as defined in the First Schedule, and any harbour that may come under the control and management of the Corporation, and includes everything that is connected therewith or is necessary to perform the function of a harbour; (v)
- (xiv) "holder of a post" means any person appointed to a post created for the normal and regular requirements of the Corporation, and includes a person acting in such a post; (i)
- (xv) "intoxicating liquor" means intoxicating liquor as defined in section 1 of the Liquor Ordinance, 1969 (Ordinance 2 of 1969); (xviii)
- (xvi) "local authority" means —
 - (a) the council of any municipality established or constituted, or deemed to be established or constituted under the Municipal Ordinance, 1963 (Ordinance 13 of 1963); or
 - (b) any village management board constituted or deemed to be constituted under the Village Management Boards Ordinance, 1963 (Ordinance 14 of 1963); or
 - (c) the Peri-Urban Development Board established under the Peri-Urban Development Board Ordinance, 1970 (Ordinance 19 of 1970); (x)
- (xvii) "prescribe" or "prescribed" means prescribe or prescribed by regulation; (xxiv)
- (xviii) "railway" means all railway lines which the Corporation controls or has the right to run trains on, and, for the purposes of section 6, includes everything that is connected therewith or is necessary to perform the function of a railway; (xvi)

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- (xix) "Registrar" means the Registrar of Companies appointed under section 7 of the Companies Act; (xiii)
- (xx) "regulation" means a regulation promulgated in terms of this Act and in force; (xv)
- (xxi) "strike" means any one or more of the following acts or omissions by any number of employees —
 - (a) the refusal or failure by them to continue to work (whether the discontinuance is complete or partial) or to resume their work or to comply with the terms or conditions of their employment, or the retardation by them of the progress of work or the obstruction by them of work; or
 - (b) the breach or unlawful termination by them of their contracts of employment, if —
 - (i) that refusal, failure, retardation, obstruction, breach or termination is in pursuance of any combination, agreement or understanding between them, whether expressed or not; and
 - (ii) the purpose of that refusal, failure, retardation, obstruction, breach or termination is to induce or compel the Corporation or any person by whom persons other than employees are or have been employed —
 - (aa) to agree to or to comply with any demands or proposals concerning terms or conditions of employment or other matters made by or on behalf of employees or any of them or by other persons who are or have been employed; or
 - (bb) to fail to give effect to any intention to change terms or conditions of employment or, if such change has been made, to restore the terms or conditions to those which existed before the change was made; or
 - (cc) to employ or to suspend or to terminate the employment of any person; (xvii)
- (xxii) "territory" means the territory of South West Africa; (iv)

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(xxiii) "the South African Transport Services" means the South African Transport Services constituted by the South African Transport Services Act, 1981 (Act 65 of 1981); (ii)

(xxv) "train" means any vehicle or engine under the control of the Corporation, on a railway; (xx)

(xxvi) "transport services" means the transportation of passengers or goods by railway, road, sea or air, or goods by pipeline, and includes everything that is connected therewith or is necessary to render such services. (xxii)

Establishment of National
Transport Corporation
Limited.

2. (1) A body corporate to be known as the National Transport Corporation Limited is hereby established.

(2) The Registrar shall enter the name of the Corporation in his registers.

(3) The registered office and postal address of the Corporation shall be situated as determined by the board and the board shall in the manner prescribed by section 170 of the Companies Act, notify the Registrar of the situation of such registered office and postal address.

Objects of Corporation.

3. The objects of the Corporation shall be —

(a) to manage, control, maintain, exploit and promote in the national interest transport services in the territory; and

(b) to manage the said transport services according to general business principles.

Powers of Corporation.

4. (1) Subject to the provisions of this Act, the Corporation shall have unlimited powers including the powers set out in subsection (2) and the Corporation may, in order to enable it to advance and achieve its objects and exercise its powers, perform any lawful act, irrespective of whether it relates to any matter expressly mentioned in this Act.

(2) Without derogating from the generality of subsection (1), and subject to the provisions of this Act, the Corporation shall have the power —

(a) to carry on any business activity in all branches of the transport services, including the introduction of new services or the continuation or the cessation of existing services;

(b) to determine in general or in particular any policy in relation to the transport services over which it in terms of this Act exercises control;

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- (c) to purchase, hire or acquire in any way stock-in-trade, plant, machinery, land, buildings, shares, debentures and every other kind or description of movable and immovable property;
- (d) to manage, insure, sell, lease, mortgage, protect, dispose of, give in exchange, work, develop, build on, improve, turn to account or in any way otherwise deal with all or any part of its movable or immovable property and assets;
- (e) to apply for, purchase or by any other means acquire, protect, grant, renew any patents, patent rights, licences, trade marks, concessions or other rights and to deal with and alienate them as provided for in paragraph (d);
- (f) to take up, borrow, lend or invest money on the conditions agreed upon;
- (g) to incur indemnities, sureties and guarantees and to give security in any manner for the repayment of loans and the proper performance of liabilities, including the hypothecation and mortgaging of property, the cession of legal claims, indemnities, sureties or guarantees;
- (h) to apply any of the surpluses, funds or moneys of the Corporation in any manner for the establishment of —
 - (i) a loan redemption fund;
 - (ii) a reserve fund to provide for the —
 - (aa) maintenance of assets;
 - (bb) replacement of assets; and
 - (cc) improvement of assets;
 - (iii) a contingency reserve fund;
 - (iv) a general fund; and
 - (v) any other funds determined by the board;
- (i) to open and operate banking accounts and to overdraw such accounts;
- (j) to make, draw, issue, execute, accept, endorse, discount, purchase or sell, promissory notes, bills, debentures, stocks, shares and any other kind of negotiable or transferable instruments or to acquire or dispose of it in any other manner;
- (k) to form or, for the purpose of obtaining from such

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company its business concern or its business or all or any of its assets or obligations, acquire, carry on, alienate, or have an interest in, any company having the same or similar objects as the Corporation, and to transfer to any such company the business or all or any of the assets or obligations of the Corporation;

- (l) to take part in the management, supervision and control of the business or operations of any company or business concern having the same or similar objects as the Corporation, and to enter into partnerships having the same or similar objects as the Corporation;
- (m) with the consent of the Cabinet previously obtained, to amalgamate with companies having the same or similar objects as the Corporation;
- (n) to make or to accept donations;
- (o) to act as principal, agent, contractor, manager, trustee, curator, executor, administrator, judicial manager or liquidator, or to designate a person or persons to act on behalf of the Corporation for such purpose;
- (p) if the current law in a foreign country so permits, to exercise any of its powers in such country and obtain registration therein;
- (q) to provide capital or other means and to render, offer or sell technical and other assistance, expert and specialized advice, information, guidance or training programmes to any person;
- (r) to pay all expenses incurred in connection with the establishment and administration of the Corporation;
- (s) to sue or be sued in any legal proceedings of a civil nature and, subject to the law governing criminal procedure to prosecute as a private prosecutor under the name of "the National Transport Corporation Limited", and to participate in arbitration proceedings as such;
- (t) to employ employees on conditions determined by the board and to remunerate, house, discharge, suspend or train them or cause them to be trained, and to indemnify them in respect of any harm, damage or loss suffered by them in the course of the performance of their duties, and to provide or supply them with sick benefits and housing facilities or benefits, to provide for and pay gratuities and pensions to its employees and to establish other incentive schemes for the employees of the Corporation;
- (u) to enter into any contract with any person, body, organi-

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zation or authority in general, or to perform a particular act or render particular services on behalf of and in favour of the Corporation;

- (v) to purchase or acquire, or grant agencies to any person, body, organization or authority and to confer upon such agency the same exemptions and concessions as are applicable to the Corporation;
- (w) to provide sport and recreation facilities in the interest of its employees, and to provide and maintain suitable buildings and sites for that purpose;
- (x) to expropriate movable and immovable property in the public interest: Provided that such powers shall be exercised in accordance with the provisions of the Expropriation Ordinance, 1978 (Ordinance 13 of 1978);
- (y) to undertake advertising;
- (z) subject to the provisions of any other law, to undertake, promote and extent air transport services in the territory, and in order to undertake air transport services to a foreign country, to conclude or enter into, with the consent of the Cabinet previously obtained, agreements which it deems necessary with that country and to exercise all rights or obligations in order to comply with or execute such agreements;
- (aa) to determine tariffs for services rendered; and
- (bb) to exercise such other powers as, in the discretion of the board, are essential to the achievement of its objects, or which the Cabinet at the request of the board may by notice in the *Official Gazette* confer upon it.

Sale of intoxicating liquor
and other articles.

5. (1)(a) The Corporation may, notwithstanding anything in any other law contained, but subject to those provisions of the Liquor Ordinance, 1969 (Ordinance 2 of 1969), which specifically apply to the Corporation sell intoxicating liquor, with or without other refreshments and any other articles in any refreshment room or bar, on a train, an aircraft or a bus conveying passengers, or at any place under the control of the Corporation.

(b) The sale of intoxicating liquor and other articles in terms of any provision of this subsection, whether by the Corporation itself or by any concessionary referred to in paragraph (c) of this subsection, shall be subject to the provisions of this section and the regulations.

(c) (i) The Corporation may upon such conditions as it may deem fit, but subject to the provisions of subpara-

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graph (ii) and (iii) of this paragraph, grant to any person a concession to carry on or undertake, at any place under the control of the Corporation, any trading activity in which the Corporation may itself engage in terms of paragraph (a) of this subsection, and may let to such person any land or premises required for that purpose.

(ii) The provisions of subparagraph (i) of this paragraph shall not be deemed to relieve any person to whom such a concession has been granted, of the obligation to obtain any licence or other authority (excluding a licence under the Liquor Ordinance, 1969 (Ordinance 2 of 1969), which he would by law be required to obtain for the conduct of his business if such business were carried on on any other land or premises.

(iii) A concession which includes the right to sell intoxicating liquor shall not be granted in terms of subparagraph (i) of this paragraph to or in favour of any person who is disqualified in terms of section 64 of the said Liquor Ordinance, 1969, from obtaining a liquor licence, or to or in favour of any manufacturer or brewer or his nominee or company, society, partnership or any other body of persons referred to in section 67 of that Ordinance and if it should at any time appear that any such concession has been granted in conflict with the provisions of this subparagraph or that any person to whom such concession has been granted has become disqualified in terms of this paragraph to be the holder thereof, such concession shall lapse as from a date determined by the Corporation.

(2) No intoxicating liquor may be sold in any refreshment room or bar referred to in paragraph (a) of subsection (1) —

- (a) in any area in which, in consequence of the taking of any vote under any law, the sale of intoxicating liquor is totally prohibited; or
- (b) at a place (other than a railway junction, a harbour or an airport) situated outside an urban area as defined in section 1 of the Liquor Ordinance, 1969 (Ordinance 2 of 1969); or
- (c) to any person to whom, or on any day or at any time when, it may not be lawfully sold on any premises which are licensed for the sale of intoxicating liquor for consumption thereon: Provided that subject to the regulations as aforesaid, intoxicating liquor may be sold in any such refreshment room or bar on any day and at any time, to any traveller who spent the previous night at a place at least 32 kilometres distant from such refreshment room or bar, for consumption by him in such room or bar: Provided further that in any area in which a Liquor Board

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established under the Liquor Ordinance, 1969, has the power to extend the hours of sale of intoxicating liquor, on any premises licensed under that Act for the sale of intoxicating liquor, or has the power to grant under that Act any other special right to the holder of such a licence, the Cabinet may exercise similar powers in respect of any such refreshment room or bar in which intoxicating liquor may be sold.

(3) The Corporation may, at any airport approved by the Cabinet, supply to any operator of a passenger air service, intoxicating liquor for consumption on board any aircraft used on such a service while it is in flight.

(4) When, by reason of riot or tumult occurring or expected to occur, licensed premises in the district are closed under the law therein in force relating to the sale of intoxicating liquor, the provisions of that law so far as it relates to the closing of licensed premises under those circumstances shall also apply to refreshment rooms or bars within the area of jurisdiction of the Corporation.

(5) (a) Notwithstanding anything to the contrary in any law contained, but subject to the provisions of paragraphs (b) and (c), the Corporation may sell or supply intoxicating liquor or any particular kind of intoxicating liquor to any employee of the age of 18 years or over, on the premises of a hostel or cafeteria maintained by the Corporation for the accommodation or feeding of its employees and approved by the Cabinet for the purposes of this section.

(b) The sale or supply of intoxicating liquor in terms of paragraph (a) shall be for consumption only on the premises of such hostel or cafeteria, and as may be prescribed.

(c) Any employee who is employed in connection with the sale or supply of intoxicating liquor to employees in terms of paragraph (a) and who knowingly sells or supplies such liquor to any person to whom or at a time when or under circumstances whereunder it may not lawfully be supplied in terms of the provisions of paragraph (a) or (b) or the regulations, shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or, in default of payment, to imprisonment for a period not exceeding 6 months, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment.

(6) Nothing in this section contained shall be construed as exempting the Corporation from paying customs duties on any intoxicating liquor or goods imported by it for sale within the area of jurisdiction of the Corporation.

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Transfer of business, property, assets and liabilities, rights and obligations.

6. (1) Notwithstanding anything to the contrary in any law contained, but subject to the provisions of this Act and any agreement or waiver by the South African Transport Services or the Treasury of the Government of the Republic of South Africa —

- (a) the whole of the business, the ownership in all the movable and immovable property, the assets and liabilities, rights and obligations which immediately prior to the commencement of this Act were managed by the South African Transport Services under the control and authority of the Cabinet in accordance with the provisions of the Executive Powers Transfer Proclamation (South African Transport Services), 1986 (Proclamation R.52 of 1986), in and in respect of the territory, are hereby with effect from the date of the commencement of this Act transferred to the Corporation, and the said business, property, assets and liabilities, rights and obligations of the authority concerned shall as from the date of commencement of this Act vest in and be binding upon the Corporation;
- (b) the authority concerned which has been so deprived of any liability or obligation shall be released from such liability or obligation even if the creditors concerned did not consent to the transfer or delegation and such liability or obligation shall on its transfer to the Corporation become a liability or obligation of the Corporation in all respects as if the Corporation itself had incurred it;
- (c) no levy, tax, transfer duty or stamp duty shall be payable in respect of the transfer of property contemplated in paragraph (a); and
- (d) any licence, exemption, permit, certificate or authority held in terms of any law by the authority concerned in respect of the said business or property, shall with effect from the date of commencement of this Act for the purpose of any such law be held by the Corporation in respect of that business or property.

(2) Without derogating from the provisions of subsection (1), the movable or immovable property referred to in that subsection, shall mean, as the case may be —

- (a) the whole railway in the territory up to the boundary at Nakop in the South of the territory and from the southern embankment of the Swakop River northwards in the West of the territory;
- (b) all immovable property used in the road transport service in the territory;
- (c) the harbour and immovable property forming part of the harbour;
- (d) the lighthouses at the seacoast of the territory;

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- (e) land in the territory expropriated under any law for purposes of the South African Transport Services, and not yet transferred but still to be so transferred;
 - (f) land in the territory reserved or set aside by or under any law, for purposes of the South African Transport Services;
 - (g) the movable property used in the rendering of transport services in the territory, including diesel locomotives, rolling material, handling equipment of goods, maintenance equipment, mobile machines, motor vehicles and trucks and passenger busses, harbour vessels and quay cranes, and current assets such as storehouse stock, maintenance stock, tools, furniture, office equipment and station equipment; and
 - (h) any movable property acquired or obtained under any agreement or waiver prior to the commencement of this Act, in substitution for or supplementary to, the movable property referred to in paragraph (g).
- (3) The Registrar of Deeds shall make the entries or notes he deems necessary to comply with the provisions of subsection (1), in or on any relevant register, title deed or other document in his office, on request and submitted to him.
- (4) (a) All shares and any interests, rights or obligations connected therewith, which the Government of the territory of South West Africa (whether they are in the name of the Cabinet or any other authority) holds in Namibia Airlines (Proprietary) Limited, shall, at the commencement of this Act, without the payment of any stamp duty or any other charges, be transferred to the Corporation.
- (b) For the purposes of paragraph (a), the said Namibia Airlines (Proprietary) Limited and any subsidiary of the said company shall, notwithstanding anything to the contrary contained in any other law or any provisions to the contrary contained in the Statutes or Memorandum of Association of the said company or its subsidiary, be deemed to be a company having the same or similar objects as the Corporation;
- (c) In so far as the said Statutes or Memorandum of Association contains provisions repugnant to the said objects, that provisions shall at the commencement of this Act, to such an extent they are repugnant, be deemed to be amended or deleted.

Establishment, composition and duties of board and directors.

7. (1) A board of directors is hereby established who shall manage and control the affairs of the Corporation, and with due regard to the provisions of this Act, shall exercise the powers and perform the duties of the Corporation.

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(2) The board of directors shall consist of —

- (a) at least 7 but not exceeding 9 persons appointed by the Cabinet; and
- (b) the managing director appointed in terms of section 11(1).

Period of office and remuneration of certain directors.

8. (1) (a) A director referred to in section 7(2)(a) —

(i) shall be appointed for a period not exceeding 3 years;

(ii) shall hold office upon such conditions (including the payment of remuneration and allowances) as the board, with the approval of the Cabinet, may determine.

(b) Different remuneration and allowances may be determined under paragraph (a)(ii) in respect of the chairman and the other directors.

(2) Any person whose period of office as a director has expired by virtue of the provisions of subsection (1)(a)(i) shall, subject to the provisions of this Act, be eligible for re-appointment for a second or further periods of office as director of the Corporation.

Acting directors.

9. (1) If a director referred to in section 7(2)(a) is absent or unable to perform his functions as director, the board may, subject to the provisions of section 12, appoint someone to act, during the absence or incapacity of the said director, as director.

(2) While such person acts as director he shall have all the powers and shall perform all the duties of that director.

(3) An acting director referred to in subsection (1), shall be remunerated, as determined by the board, out of the remuneration which is due to the director in whose stead he acts or which would have become due to such director had he acted as director.

(4) The provisions of section 14 shall *mutatis mutandis* apply to such acting director.

Chairman and acting chairman.

10. (1) The Cabinet shall designate one of the directors referred to in section 7(2)(a), as chairman of the board.

(2) The chairman of the board shall hold office as chairman for a period not exceeding 3 years: Provided that any chairman whose period of office has expired by virtue of the provisions of this subsection may, subject to the provisions of subsection (1) and if he is re-appointed as director as contemplated in section 8(2), be eligible for re-appointment for a second or further periods of office as chairman of the board.

(3) In the event of the chairman being absent or unable to perform his duties as chairman, the board shall designate any of the other directors referred to in section 7(2)(a), to act as chairman during the absence or incapacity of the chairman.

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(4) While such director acts as chairman he shall have all the powers and shall perform all the duties of the chairman.

Managing director.

11. (1) At a meeting of the directors referred to in section 7(2)(a) a person shall be appointed by majority decision as managing director of the Corporation.

(2) The managing director shall be the chief executive officer of the Corporation and shall occupy himself full-time with the affairs of the Corporation, and shall have the capacity, and shall perform such duties as the board may delegate and assign to him.

(3) The directors referred to in section 7(2)(a) shall —

(a) determine at their discretion the conditions of service (including the payment of remuneration and allowances) of the managing director: Provided that the person who holds office as managing director may take part in or become a member of any staff scheme established by the Corporation as a service benefit for employees;

(b) if the managing director is absent or unable to perform his functions or if no one has been appointed as managing director, designate one of their number or an employee of the Corporation to act, during such absence or incapacity, or until a managing director is appointed, as the case may be, as managing director.

(4) While he is acting as managing director, such person shall have all the powers and shall perform all the duties of the managing director.

(5) Except where in this section it is determined otherwise, the managing director shall be appointed for an indefinite period.

Certain persons disqualified from being appointed or acting as director of the Corporation.

12. (1) No person who —

(a) is a member of the Assembly or Cabinet, the executive authority or legislative authority in terms of the constitution of the representative authority of a population group as defined in the Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980), or of the Legislative Authority of Rehoboth referred to in section 4 of the Rehoboth Self-Government Act, 1976 (Act 56 of 1976);

(b) has been declared mentally ill in terms of the Mental Health Act, 1973 (Act 18 of 1973);

(c) has been disqualified from being appointed or acting as a director of a company in terms of sections 218 and 219 of the Companies Act;

(d) is in the full-time employment of a department of the Government Service as defined in the Government Service Act, 1980 (Act 2 of 1980); or

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- (e) has a real interest in or participates actively in the control and management of any other transport undertaking,

shall be qualified to be appointed or to act as a director of the Corporation.

(2) Subsection (1)(e) shall not apply to a person who is a director or employee of any undertaking referred to in that subsection in which the Corporation has an interest.

Defect in appointment of director and validity of acts.

13. The acts of a director of the Corporation shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

Vacation of office by directors and filling of vacancies.

14. (1) A director of the Corporation shall vacate his office —

- (a) if he becomes disqualified in terms of section 12 to be a director of the Corporation;
- (b) if he resigns as director of the Corporation;
- (c) if he is removed from office under subsection (2).

(2) (a) A director appointed in terms of section 7(2)(a), may, at any time, be removed from office by the Cabinet.

(b) A managing director may, at any time, be removed from office by a majority decision at a meeting of the directors referred to in section 7(2)(a).

(3) Any casual vacancy on the board caused by the death of or the vacation of office by a director shall —

- (a) in the case of a director referred to in section 7(2)(a), be filled for the unexpired portion of the period of office of a deceased director or the director who has vacated his office, by the Cabinet;
- (b) in the case of a director referred to in section 7(2)(b), be filled without delay in terms of the provisions of subsection (1) or (3)(b) of section 11.

Meetings, quorum and decisions of the board.

15. (1) The first meeting of the board shall be held at such time and venue as the Cabinet may determine and subsequent meetings of the board shall be held at such time and venue as the board may determine: Provided that a special meeting of the board shall be convened by the chairman at the written request of at least 3 directors.

(2) The majority of the directors forming the board, shall constitute a quorum for any meeting of the board.

(3) The decision of a majority of directors present at any meeting of the board, shall be the decision of the board: Provided that in the event of an equality of votes, the chairman shall have

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a casting vote in addition to his deliberative vote.

(4) Notwithstanding the provisions of subsections (1) and (2), the board may, without holding any meeting, take a decision referred to in subsection (3), by means of the signing by all the directors of the board of a document wherein they shall confirm that they had the proposed decision inspected and wherein everyone shall indicate whether he is in favour of or against the decision concerned, and if that decision has so been taken, it shall be noted in the minutes of the next ensuing meeting of the board.

(5) No decision of the board or act performed under the authority of the board shall be invalid by reason only of any vacancy on the board or by reason only of the fact that any person who was not entitled to sit as director, sat as director when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the requisite majority of the directors who were present at the time and entitled to sit as directors.

(6) The board shall cause a record to be kept of the proceedings at the meetings of the board, and the Cabinet may at any time demand that such minutes be submitted to it for inspection.

(7) The board may make rules in relation to the holding of, and procedure at, meetings of the board.

Committees of board.

16. (1) The board may from time to time establish committees to advise it in the exercise of any of its powers or the performance of any of its duties.

(2) A committee established under subsection (1) shall consist of two or more directors appointed by the board.

(3) The board may designate any member of the committee as chairman of that committee.

Delegation of powers.

17. (1) The board may delegate any power conferred to it by or under this Act, to —

- (a) any director of the board;
- (b) any committee of the board;
- (c) a holder of any post in the Corporation; or
- (d) any employee of the Corporation.

(2) The managing director may delegate any power delegated to him under subsection (1) to any employee of, or a holder of any post in, the Corporation.

(3) Any power so delegated in terms of subsection (1) or (2), shall be exercised subject to the directions of the board or the managing director, as the case may be, which or who may at any time withdraw such delegation.

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(4) A delegation under subsection (1) or (2) does not prevent the board or the managing director as the case may be, from exercising itself or himself the power concerned.

Liability of directors and
employees for loss or dam-
age

18. A director or an employee of the Corporation shall not be personally liable for any loss or damage which may occur in or in connection with the performance of his duties, unless the loss or damage is due to his wilful misconduct, dishonesty, gross negligence or failure to comply with any provision of this Act.

Duty of director to disclose
interest in certain contracts.

19. (1) The provisions of sections 234(1), (2), (3) and (5), 235 and 237(1) and (4) of the Companies Act shall *mutatis mutandis* apply in respect of a director of the Corporation and in such application, unless the context indicates otherwise, any reference therein to a company, a director, or official of a company shall be construed as a reference to the Corporation, a director or employee of the Corporation, as the case may be.

(2) Notwithstanding the provisions of section 15(4) permitting the taking of a resolution by way of a written resolution signed by the directors, no such resolution which concerns contracts or proposed contracts referred to in section 234 of the Companies Act as applied by subsection (1), shall be valid unless the provisions of that section and section 235 of the Companies Act as applied by the said subsection (1) are complied with.

(3) Any director or employee who fails to comply with a provision of the Companies Act as applied by subsection (1), shall be guilty of an offence and if convicted shall be liable to be sentenced to a fine not exceeding R1 000 or imprisonment for a period not exceeding 12 months or to both such fine and imprisonment.

(4) Every declaration of interest made in terms of subsection (1) shall be recorded in the minutes of the meeting of the board at which the declaration is made, or in the case of the circumstances referred to in subsection (2), in the minutes of the next ensuing meeting of the board.

Expenditure.

20. (1) The expenditure incurred by or on behalf of the Corporation, including the remuneration of its directors and auditors, shall be defrayed from the funds of the Corporation.

(2) (a) The Cabinet may request the Corporation to provide in general or in particular services or facilities either free of any charge or at a tariff which does not cover the costs of, or tariff for, the provision of the said services or facilities, to any person, body, organization or category of persons.

(b) When the Cabinet so requests the Corporation, the Corporation may require from the Cabinet to pay the Corporation for the provision of such services or such

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facilities the compensation to be determined by agreement.

- (c) If the Corporation and the Cabinet cannot come to any agreement the compensation payable by the Cabinet shall be the difference between the costs or tariff to be paid (if any) in terms of the request of the Cabinet by the person, body, organization or category of persons referred to in paragraph (a) and the costs or tariff which the Corporation would have imposed if the said services or facilities had been provided on the basis of business principles.

Share capital of Corporation.

21. (1) The authorized share capital of the Corporation shall, subject to the provisions of subsection (2), be one thousand million rand consisting of one thousand million shares with a par value of one rand each.

(2) The authorized share capital of the Corporation may from time to time with the approval of the Cabinet be increased by the board by the creation of such number of additional shares with a par value of one rand each as the board may determine.

Shareholding of Cabinet.

22. (1) (a) In consideration for the transfer to the Corporation of the movable and immovable property referred to in section 6 —

(i) one hundred and fifty million of the shares referred to in section 21(1) shall, at the commencement of this Act, vest in the Cabinet; and

(ii) a number of the remaining authorized shares determined by the board shall as soon as practicable after the establishment of the Corporation and with due regard to the true value of the said movable and immovable property, vest in the Cabinet.

(b) Until the shares referred to in paragraph (a), have in terms of the provisions of section 24 been converted into preference shares or any other class of shares, the said shares shall be deemed to have been issued as ordinary shares.

(2) The Cabinet may at any time, in addition to the shares held by it under the provisions of subsection (1), but subject to the provisions of section 23, take up any further shares in the Corporation if it deems it necessary.

(3) The Cabinet shall pay for shares taken up in terms of subsection (2) out of moneys appropriated by the Assembly for that purpose.

(4) The rights attaching to the shares held by the Cabinet in terms of subsection (1) or (2), shall be exercised by the Cabinet.

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(5) The Cabinet may sell or otherwise dispose of shares held by it in terms of this Act at a price equal to at least the par value of such shares.

Issuing of shares.

23. (1) The shares referred to in section 21(1) which are unissued at the commencement of this Act or created after such commencement in terms of subsection (2) of that section, shall be under the control of the board, and the board may, subject to the provisions of subsection (2) of this section, issue such shares to any person including the Cabinet at such times, at such prices, in such quantities, on such conditions and with such rights attached thereto as the board may determine.

(2) The board shall not issue shares under subsection (1) —

(a) below par value of such shares;

(b) otherwise than as fully paid-up shares; and

(c) to any person other than the Cabinet —

(i) unless such shares were first offered to the Cabinet and the Cabinet has informed the board in writing that it is not taking up such shares;

(ii) at a price, on conditions and with rights attaching thereto which are more favourable than the price at which, the conditions on which and the rights with which they were offered to the Cabinet in terms of subparagraph (i).

(3) The board may issue the shares referred to in subsection (1) —

(a) as ordinary shares, preference shares or shares of such other class as the board may determine;

(b) in payment or part payment for any rights or property acquired or to be acquired by the Corporation.

Conversion of shares.

24. Shares issued by the board as ordinary shares, or any quantity thereof held by any shareholders, including the Cabinet, or any class of shareholders or group of persons, may be converted by the board with the approval of the shareholders or persons concerned into preference shares or such other class of shares as the board may determine, and the board may attach to shares so converted such rights as the board may determine.

Register of shareholders.

25. (1) The board shall keep in the English or Afrikaans language, a register of shareholders, in which shall be entered —

(a) the name and address of each shareholder;

(b) the number of shares of each class held by each shareholder;

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(c) the date on which such shares were registered in the name of a shareholder; and

(d) the other particulars as may be prescribed.

(2) The register referred to in subsection (1) shall in any court of law be *prima facie* proof of the matters entered therein under this Act.

(3) All shares taken up in terms of this Act shall, with the approval of the board, be transferable and shall be transferred by entry in the register referred to in subsection (1): Provided that shares held by the Cabinet may be transferred by it without such approval of the board.

Dividends and reserves.

26. (1) The board may, after consultation with the shareholders, declare dividends on shares or on shares of a particular class.

(2) The board may, before declaring a dividend —

(a) carry forward any profit or portion thereof to the following financial year of the Corporation;

(b) set aside any profit or portion thereof as a reserve for a purpose determined by the board.

Issue of debentures and stock.

27. (1) If money is borrowed or raised by the Corporation, or rights or property is acquired by the Corporation by the issue of debentures or stock, the board shall keep, except in respect of bearer stock, registers in the Afrikaans or English language, in which shall be entered in respect of such issue —

(a) the name and address of each holder of such debentures or stock;

(b) the amount of such debentures and stock of each holder;

(c) the date on which such debentures or stock were registered in the name of a holder;

(d) such other particulars as may be prescribed.

(2) A register referred to in subsection (1), shall in any court of law be *prima facie* proof of the matters entered therein under this Act.

(3) Debentures and stock issued by the Corporation shall be transferable and, unless the Corporation at the time of issue of debentures and stock prescribes another method of transfer, shall be transferred by entry in a register referred to in subsection (1).

(4) The Corporation may purchase debentures and stock issued by it, and cancel or sell such debentures and stock.

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assistance.

28. (1) The Cabinet may, for such period and on such conditions as it may determine, guarantee due performance by the Corporation of any contractual obligation incurred or to be incurred by the Corporation towards any person whether inside or outside the territory.

(2) Notwithstanding any provisions to the contrary in this Act contained, the Cabinet may out of moneys appropriated by the Assembly for that purpose, at any time, and on the conditions determined by it, render to the Corporation such financial assistance as it may deem necessary.

Bookkeeping.

29. (1) The Corporation shall keep in the Afrikaans or English language, such account books as are necessary to represent fairly the state of affairs and business of the Corporation and to explain the transactions and financial position of the business of the Corporation.

(2) For the purposes of subsection (1) separate accounts shall be kept for the railway services, road transport services, harbour services, pipeline services and air transport services.

(3) The financial year of the Corporation shall terminate on 31 March in each year unless the Cabinet by way of notice in the *Official Gazette* determines otherwise.

Annual financial statements.

30. (1) (a) The board shall in respect of every financial year of the Corporation cause annual financial statements to be prepared as soon as possible, but in each case within 4 months after the end of the financial year in question.

(b) Copies of the annual financial statements referred to in paragraph (a) shall at all times lie open to inspection by all shareholders of the Corporation at the registered office of the Corporation referred to in section 2(3), during normal office hours, and shall so be open to inspection for a period to be prescribed.

(2) The annual financial statements referred to in subsection (1) shall consist of —

(a) balance sheets dealing with the state of affairs of the Corporation and which deal for that purpose separately with the services referred to in section 29(2);

(b) income and expenditure statements dealing with the profit or loss of the Corporation and which deal for that purpose separately with the services referred to in section 29(2);

(c) a statement reflecting —

(i) the amount, if any, by which the authorized share capital of the Corporation was increased under section 21(2);

(ii) the number of shares of the Corporation held under any provision of this Act by the Cabinet or any other

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person;

(iii) the number of shares, if any, sold to any person or disposed of by the Cabinet under section 22(5); and

(iv) the number of ordinary shares, if any, converted to any other class of shares under section 24; and

(d) such other statements as may be prescribed.

(3) The annual financial statements of the Corporation shall, in accordance with generally accepted accounting practice, represent fairly the state of affairs of the Corporation as at the end of the financial year in question and the profit or loss of the Corporation for that financial year.

Audit, appointment, remuneration, resignation and dismissal of auditors.

31. (1) (a) The books of account, accounting records and annual financial statements of the Corporation shall be audited annually by a firm or firms of chartered accountants and auditors whose partners are registered as Public Accountants and Auditors in terms of the provisions of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951).

(b) When the auditors of the Corporation have carried out their audit without any restrictions whatsoever, they shall as soon as possible but in any case within 6 months after the end of the financial year in question file a report to the effect that they have examined the books of account, accounting records and annual financial statements and that in their opinion the financial position of the Corporation and its subsidiaries, if any, and the results of the activities of the Corporation and of those of its subsidiaries are represented fairly.

(c) In case the auditors are not in a position to so file a report, or not to file a report without qualification, they shall include in their report a statement to that effect, and they shall set out the facts and circumstances preventing them from so reporting or from reporting without qualification.

(d) Copies of the report referred to in this section shall at all times lie open to inspection by all shareholders of the Corporation at the registered office of the Corporation referred to in section 2(3), during normal office hours, and shall so be open to inspection for a period to be prescribed.

(2) The auditors referred to in subsection (1) of this section shall be appointed by the board and their remuneration shall be determined by agreement with the board.

(3) The auditors of the Corporation may at any time resign as such provided that the requirements of subsections (4) and (5) of this section are complied with.

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(4) If the auditors of the Corporation intend to resign, they shall deliver to the chairman a notice in writing in which they give notice of their intention to resign and indicate that they have not reason to believe that in the conduct of the affairs of the Corporation a material irregularity has taken place or is taking place which has caused or is likely to cause financial loss to the Corporation or to the shareholders or creditors of the Corporation, other than an irregularity, if any, which has been reported by them to the Public Accountants' and Auditors' Board in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951): Provided that it shall not be necessary for the auditors to have carried out, for the purpose of such notification, a special audit subsequent to the date up to which the last annual financial statements on which they have already reported, were made up.

(5) The board shall upon receipt of the notice referred to in subsection (4) appoint with due regard to the provisions of this section, auditors to fill the vacancy whereafter the board shall forthwith notify the auditors who indicated their intention to resign under subsection (4), of its receipt of the said notification.

(6) The resignation of the said auditors shall become effective upon the receipt by them of the notification of the board referred to in subsection (5).

(7) An auditor of the Corporation shall —

(a) have the right of access at all times to the accounting records and all books and documents of the Corporation, and be entitled to require from the directors or employees of the Corporation such information and explanations as he thinks necessary for the performance of his duties as auditor and shall also have the right of access to all current and former financial statements of any subsidiary of the Corporation, if any, and be entitled to require from the directors or employees of such subsidiary all such information and explanations in connection with any such statements and in connection with the accounting records, books and documents of the subsidiary as he may consider necessary; and

(b) be entitled to attend any meeting of the board and to receive all notices of and other communications relating to any meeting of the board and to be heard at any meeting which he attends on any part of the business of the meeting which concerns him as auditor.

(8) The board may with the prior approval of the Cabinet remove any auditor appointed by the board and at the same meeting, subject to the provisions of subsection (1)(a), appoint another firm of auditors as auditors in their place: Provided that where an auditor has reason to believe that in the conduct of the affairs of the Corporation a material irregularity has taken place which has caused or is likely to cause financial loss to the

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Corporation or to any of its shareholders or creditors, and he has made a report thereon in writing to the board, he may not be removed from office until the provisions of section 26(3)(b) of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), have been complied with.

Report of the board.

32. (a) The board shall, as soon as possible, but in any case within 6 months after the end of the financial year of the Corporation cause a report on its activities during that financial year to be drawn up.

(b) Copies of the report referred to in paragraph (a) shall at all times lie open to inspection by all shareholders of the Corporation at the registered office of the Corporation referred to in section 2(3), during normal office hours, and shall so be open to inspection for a period to be prescribed.

Tabling of annual financial statements, auditor's report and report of the board.

33. (1) Notwithstanding the provisions of sections 30(1)(b), 31(1)(d) and 32(b), the board shall as soon as practicable after the period of 6 months after the end of the financial year in question, but not later than 8 months after the end of that financial year, transmit the annual financial statements, the auditor's report and the report of the board to the Cabinet.

(2) For as long as the Cabinet holds any shares in the Corporation, the Minister charged with finance or any other Minister designated by the Cabinet, shall lay upon the table in the Assembly the annual financial statements, the auditor's report and the report of the board referred to in subsection (1), within 14 days after receipt thereof if the Assembly is then in session, or, if the Assembly is not then in session, within 14 days after the commencement of its next ensuing session.

Saving regarding defence works.

34. Nothing in this Act contained shall derogate from the rights and powers conferred upon any authority acting in terms of the Defence Act, 1957 (Act 44 of 1957), nor shall any powers conferred upon the Corporation by this Act be exercised in respect of any defence works or approaches thereto.

Conveyance of passengers and goods by train.

35 (1) Subject to the provisions of subsection (2) no person shall enter any train or coach of the Corporation for the purpose of travelling therein as a passenger unless he has with him a valid free pass or ticket.

(2) (a) If a passenger travels in any train or coach without having a valid free pass or ticket with him, or being in or having alighted from any train or coach, fails or refuses to present for examination or to deliver up his free pass or ticket immediately on requisition being made therefor, he shall be liable to pay on the demand of any authorized employee, the excess charge determined by the board in addition to the ordinary fare for the distance which he has travelled or is travelling or, if there be any doubt as to the station from which he originally started, the fare from the

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station from which the train or coach originally started or, if the tickets of passengers travelling in the train or coach have been examined since the original starting of the train or coach, the ordinary fare from the place where the tickets were examined or, if they have been examined more than once, the place where they were last examined.

(b) If a passenger travels or attempts to travel in a portion of a train or coach of a higher class than that for which he has obtained a free pass or ticket, or travels beyond the place authorized by his free pass or ticket, he shall be liable to pay on the demand of any authorized employee, the excess charge determined by the board in addition to any difference between any fare paid by him and the fare in respect of such journey as he has made: Provided that particular circumstances under which no excess charge shall be demanded may be prescribed.

(c) If any person wilfully refuses to pay the amounts due by him under this section to the employee demanding the same, it shall be lawful for any station master or such employee, or other authorized employee to arrest that person without warrant and detain him in custody and bring him or cause him to be brought as speedily as possible before a court having jurisdiction to be dealt with according to law on a charge of such wilful refusal and he shall be liable on conviction to a fine not exceeding R250, or in default of payment, to imprisonment for a period not exceeding 3 months, or to both such fine and such imprisonment: Provided that no person shall be arrested or detained without warrant unless there shall exist reasonable grounds for believing that except by the arrest of the offender he would not be found or brought to trial without delay, trouble or expense.

(d) It shall be the duty of the court passing any sentence under this section to impose, in addition to the sentence, a further fine equal to the amount payable to the Corporation for the fare and excess charge payable or due by the accused in respect of the journey made by him in the class in which he was travelling, and such court may, in addition, order that if on the payment of the fine or at the expiration of the sentence the further fine has not been paid, the person convicted shall be imprisoned for a period not exceeding one month.

(e) The Corporation shall refund any fare or difference in fare paid in terms of the provisions of this section, provided that —

(i) application for the refund be made within 14 days from the date of payment; and

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- (ii) the applicant had at the time he made the payment a valid subsisting ticket or free pass available for the journey on which he was found without a ticket, or some *bona fide* reason for being without such ticket or free pass.
- (3) (a) If a passenger wilfully alters, obliterates or defaces a free pass or ticket issued by the Corporation designed to entitle the holder to travel in or on any train or coach of the Corporation so as to render the date, number or any material portion thereof illegible, he shall be guilty of an offence and liable on conviction to a fine not exceeding R250 or, in default of payment, to imprisonment for a period not exceeding 3 months, and shall, in addition, be liable to a further fine equal to the amount of —
 - (i) the single fare for the journey made in the class in which he was travelling; plus
 - (ii) such excess charge as would be payable or due in terms of subsection (2) by any person travelling without a free pass or ticket upon such distance.
- (b) The court, in passing sentence under this subsection, may, in addition, order that if on the payment of the fine or at the expiration of the sentence the further fine has not been paid, the person convicted shall be imprisoned for a further period not exceeding one month and every such altered, obliterated or defaced free pass or ticket shall be confiscated.
- (c) Any person who obtains by false pretences or other fraudulent means or who counterfeits, forges, or alters any free pass or ticket, order or receipt for fare issued by the Corporation designed to entitle the holder to travel in or on any train or coach of the Corporation or who utters, publishes, or puts into circulation any counterfeit or false free pass, ticket, order or receipt for fare, with intent to defraud the Corporation or any other person, shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or, in default of payment, to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.
- (4) (a) If a person sells or parts with the possession of a free pass or ticket so issued by the Corporation, in order to enable any other person to travel therewith, or purchases or receives such free pass or ticket so sold or parted with, he shall be guilty of an offence and liable on conviction to a fine not exceeding R250 or, in default of payment, to imprisonment for a period not exceeding 3 months, and if the purchaser or receiver of the free pass or ticket travels therewith he shall be liable to pay a further fine not exceeding the amount of the single fare for the journey

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authorized by the free pass or ticket, and he shall further be liable to pay the excess charge referred to in subsection (2).

- (b) The court, in passing a sentence under this subsection, may, in addition, order that if on the payment of the fine or at the expiration of the sentence the further fine has not been paid, the person convicted shall be imprisoned for a further period not exceeding one month.

- (5) (a) If a person, with intent to defraud the Corporation —

(i) enters any train or coach; or

(ii) uses or attempts to use in or on any train or coach a free pass or ticket which has already been used for the journey undertaken,

he shall be guilty of an offence and liable on conviction to a fine not exceeding R250 or, in default of payment, to imprisonment for a period not exceeding 3 months, and he shall in addition be liable to a further fine equal to the amount of —

(aa) the single fare for the distance he travelled; plus

(bb) the excess charge referred to in subsection (2).

- (b) The court, in passing a sentence under this subsection, may, in addition, order that if on the payment of the fine or at the expiration of the sentence the further fine has not been paid, the person convicted shall be imprisoned for a further period not exceeding one month.

(6) Notwithstanding anything to the contrary in any law contained all such further fines recovered in terms of this section, shall be paid over to the Corporation.

(7) A consignor or consignee by accepting a receipt or written contract for the transport of goods assents to the conditions of carriage, freight charges, the time, place and manner of transport and delivery, including liability to pay demurrage.

(8) The consignor of goods shall be liable for the freight thereon and if the contract between him and the Corporation provides that the goods shall be transported on the account of the consignee or any other person the Corporation may, notwithstanding the provisions of such contract, thereafter recover the

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freight from the consignor if the consignee or other person fails or refuses to pay.

- (9) (a) If a person fails on demand made by or on behalf of the Corporation to pay any freight or any other charge due to the Corporation in respect of any goods, the Corporation may detain the whole or any part of the goods or, if they have been removed, any other of the goods of that person which are then in, or may thereafter come into, its possession.
- (b) When any goods have been detained in terms of paragraph (a) the Corporation may, in the case of perishable goods, sell in any manner at once and, in the case of other goods, sell by public auction what it considers to be sufficient of the goods to produce a sum equal to the freight and all expenses of the detention, notice and sale, including, in the case of animals, the expense of feeding, watering and tending the same.
- (c) Out of the proceeds of the sale the Corporation may retain a sum equal to the freight and expenses aforesaid, including any balance due in respect of any former freight and expenses, and shall then render to the person entitled thereto the surplus (if any) of the proceeds and such of the goods (if any) that remain unsold.
- (d) If a person on whom a demand has been made for any freight due by him fails to remove within 7 days any goods which have remained unsold after a sale in terms of paragraph (b), the Corporation may sell all of them and dispose of the proceeds of the sale as nearly as may be in accordance with the provisions of paragraph (c).
- (e) Notwithstanding any provisions to the contrary contained in this subsection the Corporation may recover by way of action in any competent court any such freight or expenses.
- (10) (a) When any goods other than lost goods referred to in section 50 have come into the possession of the Corporation for transport or otherwise and are not claimed by the owner or other person appearing to the Corporation to be entitled thereto, or when a declaration in a consignment note in connection with the nature and mass of goods is false in any material particularity or when the ownership of goods is uncertain in consequence of an incorrect or insufficient address of the consignee, the Corporation shall, if the owner or other person be known, cause a notice to be served upon him wherein he shall be requested to remove such goods.
- (b) If the owner or other person be not known or the notice cannot be served upon him, or if he does not comply with the request in the notice referred to in paragraph (a), the

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Corporation may sell the goods by public auction, rendering the surplus (if any) of the proceeds of the sale to pay any person so entitled thereto, or the Corporation may place the goods in a warehouse and thus relieve itself from any further liability.

(c) Notwithstanding any provisions to the contrary contained in this section, if perishable goods accepted by the Corporation for transport be, on arrival at their destination, in such a condition that in the opinion of the Corporation they will become worthless, the Corporation may, if the owner or person entitled to the goods has not claimed them, proceed at once to carry out the sale thereof in any manner, or if the goods have in fact become worthless, may proceed to destroy them.

(11) (a) Subject to any provisions to the contrary contained in this Act and excluding dangerous goods brought upon a railway for the purpose to tender such goods to the Corporation for transport, no person shall bring or take with him upon a railway a loaded firearm or other dangerous object.

(b) Any person who contravenes the provisions of paragraph (a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding R3 000 or, in default of payment, to imprisonment for a period not exceeding 3 years, or to both such fine and such imprisonment, and the firearm or object in question may furthermore be confiscated or caused to be destroyed by any competent court.

(c) The provisions of this subsection shall apply in addition to, and not in substitution for, any other law relating to explosives, arms or ammunition.

(d) The provisions of this subsection shall not apply to loaded firearms or other dangerous objects which a member of any unit of the South African Defence Force, the South West African Police or South African Police, the Prison Service or an employee of the Corporation may take with him upon a railway in the course of his employment or duty as such.

(12) The provisions of subsections (7), (8), (9), (10) and (11) of this section and section 45 shall *mutatis mutandis* apply to the road transport services.

Compensation for livestock
killed or injured by trains.

36. (1) The Corporation shall pay compensation to the owner of any livestock killed or injured by a train: Provided that no compensation shall be payable in respect of any livestock killed or injured where the killing or injury is due to the negligence of the owner or his servant.

(2) No person shall be entitled to compensation in terms of this section for the killing or injury of any livestock unless he,

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within 72 hours after the livestock has been killed or injured, gives notice to the nearest employee in charge of a station, or in charge of a section, of the death or injury and of the number and kind of the livestock so killed or injured in respect of which compensation is claimed: Provided that if any employee of the Corporation was aware of the death or injury, it shall be sufficient compliance with this section if such notice be given a reasonable time after such death or injury.

(3) The carcasses or remains of all livestock killed and all injured livestock in respect of which any compensation is claimed in terms of this section shall be diligently and to the best of his ability kept and preserved by the owner instituting the claim, for a period of not less than 3 full days from the time when the livestock was killed or injured or until such time as the carcasses or remains have been inspected by a person appointed to ascertain the value of the livestock killed or injured: Provided that if any livestock is seriously injured or maimed, and the owner, his servant or an employee of the Corporation, considers it advisable, he may kill such livestock without in any way thereby affecting the question of the liability or otherwise of the Corporation for the value of such livestock.

(4) A person who fails to keep and preserve diligently and to the best of his ability the carcasses and remains of livestock so killed or injured shall not be entitled to any of the benefits of this section.

Powers of entry upon adjoining land.

37. (1) In case of a washaway of a railway line or a pipeline or any portion thereof, or of any similar accident, the Corporation may, without prior leave, enter upon the adjoining lands and may take therefrom such reasonable quantity of earth, rock, or other material as may be necessary for the purpose of effecting the necessary repairs, and construct and use thereon such temporary deviations of the line as the Corporation may deem necessary.

(2) If, in the opinion of the Corporation, the existence upon any land adjoining any line of railway or pipeline of any tree, bush, growth, fence, embankment or other obstruction is likely to endanger or impede the safe and proper use of such line of railway or pipeline or the telegraph or telephone route established in connection therewith, the Corporation may, after reasonable notice to the owner or occupier of such land, remove so much of such tree, bush, growth, fence, embankment or other obstruction as, in the opinion of the Corporation it endangers or impedes such safe and proper use: Provided that where, in the opinion of the Corporation, such safe and proper use is actually interfered with or endangered by any such tree, bush, growth, fence, embankment or other obstruction, the Corporation may cause the work which is immediately necessary for the removal of the interference or danger to be undertaken without any such notice.

(3) The Corporation shall pay compensation to the owner or occupier of the land referred to in subsections (1) and (2) for any

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damage which may be caused to such land.

(4) If any dispute arises as to the amount of such compensation the matter shall be settled, at the option of the owner or occupier of such land, either —

- (a) by arbitration in accordance with the provisions of the Arbitration Act, 1965 (Act 42 of 1965); or
- (b) by action instituted by the owner or occupier in a competent court.

Harbours.

38. (1) (a) The harbour is a compulsory pilotage harbour.

(b) Every ship entering, leaving or moving in such a harbour shall be navigated by a pilot who is an employee of the Corporation, except ships exempted by statute or regulation.

(c) It shall be the pilot's function to navigate a ship in the harbour and to direct its movements, and to determine and control the movements of the tugs assisting the ship under pilotage.

(d) The pilot shall determine the number of tugs required for pilotage in consultation with the employee of the Corporation who is in control of the harbour (hereinafter referred to as the Port Captain) whose decision shall be final.

(e) A master of a ship shall at all times remain in command of his ship.

(f) Neither the master nor any person under his command may, while the ship is under pilotage, in any way interfere with the navigation or movement of the ship or prevent the pilot carrying out his duties, provided that the master may intervene, in a case of emergency, to preserve the safety of his ship, cargo or crew, and may take whatever action he deems necessary to avert the danger.

(g) Where a master intervenes he shall immediately inform the pilot thereof and after having rectified the state of emergency, he shall permit the pilot to proceed with the execution of his duties.

(h) The master shall ensure that the officers and such crew are at their posts, that a proper look-out is kept and that the pilot shall be rendered all assistance necessary in the execution of his duties.

(i) The Corporation and the pilot shall be exempted from liability for loss or damage caused by an act or omission of the pilot.

(j) For the purposes of this subsection "pilot" shall mean any person duly licensed by the Corporation or any other

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authority approved by the Corporation, to act as a pilot at a particular harbour.

(2) The master of a ship which enters any harbour shall, upon demand, produce for inspection the ship's register and documents to the Port Captain or other authorized employee of the Corporation and any master who fails to do so, shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or, in default of payment, to imprisonment for a period not exceeding 2 years.

(3) (a) The Cabinet may by notice in the *Official Gazette* for that purpose designate any employee of the Corporation at any harbour to make sure that all dock or harbour dues, duties or charges of all kinds which may be due by any master or his ship at the harbour at which his ship is lying, shall be paid and that from the employee a certificate be received by the said master that he has complied with the requirements of this Act and with the regulations of the harbour, and every such ship shall be subject to a lien in favour of the Corporation in respect of the amount so due.

(b) The employee designated in terms of paragraph (a) may refuse to give any master in the harbour clearance outward until such time the said moneys, dues or charges due have been paid by the master or his ship.

(4) In the case of any contravention of this Act on board any ship within a harbour, the master of the ship may be prosecuted in respect thereof and be held liable for the contravention.

(5) If, at the time of landing and delivery at a harbour of goods to the Corporation for transit or delivery to the consignee, the shipowner notifies the Corporation in writing that freight or other charges to the amount specified in the notice are still unpaid in respect of those goods, the Corporation is hereby authorized to retain and refuse delivery of the goods to the owner or any other person until —

(a) a receipt for the amount referred to in the notification, signed or purporting to be signed by or on behalf of the shipowner was produced; or

(b) a release from payment of the amount referred to in the notification, signed or purporting to be signed by or on behalf of the shipowner was produced; or

(c) the sum claimed, together with any charges and duty in respect of the said goods, was paid,
to the Corporation.

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- (6) (a) If the Corporation on production of a receipt or release or on payment referred to in subsection (5), delivers the goods to the party producing the receipt or release or making the payment, no liability whatsoever shall attach to the Corporation in respect of the shipowner, the consignee, the owners, or any other person in respect of the goods.
- (b) If no payment or no release as aforesaid be made or produced, the Corporation may, and, if required by the shipowner, shall, at the expiration of 90 days from the date when the goods were placed in its custody, or, if the goods be of a perishable nature, at such earlier period as in its discretion it thinks fit, sell by public auction such goods either for inland use or for exportation, of so much thereof as may be necessary to satisfy the charges incurred by the Corporation under this subsection.
- (c) Before the goods referred to in paragraph (b) be sold, the Corporation shall give reasonable notice thereof in two newspapers circulating in the territory, and if the address of the owner of the goods has been stated on the manifest of the cargo or on any of the documents which have come into the possession of the Corporation or if the said address be otherwise known to it, the Corporation shall give per registered letter notice of the sale to the owner of the goods.
- (d) The title of a *bona fide* purchaser of the goods shall not be invalidated by reason of the omission to send the notice required by this section, nor shall any such purchaser be obliged to enquire whether the notice has in fact been sent.
- (7) The proceeds of sale of the goods referred to in subsection (6)(b) shall be applied by the Corporation in the following manner and order, namely —
- (a) in case the goods be sold for use within the territory, in payment of any customs duties owing in respect thereof;
- (b) in payment of the expenses of the sale and advertising;
- (c) in payment of the storage charges, rates, and other charges due to the Corporation in respect of the said goods;
- (d) in payment of the amount claimed by the shipowner as due for freight or other charges in respect of the said goods; and

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(e) the surplus, if any, shall be paid to the owner of the goods.

(8) When any goods are placed in the custody of the Corporation in terms of subsection (5) it shall be entitled to storage charges in respect thereof, and it shall also have power at the expense of the owner of the goods to do all such reasonable acts as in the opinion of the Corporation are necessary for the proper custody and preservation of the goods and it shall have a lien on the goods for such storage charges and expenses.

(9) Nothing in this section contained shall be construed as obliging the Corporation to take into custody any goods for transit or delivery to any consignees, or to enquire into the validity of any claim for freight or other charges made by any shipowner.

(10) Where in this section is required that any notice shall be given or any receipt and release shall be produced to the Corporation, the notice or receipt and release shall be deemed to have been validly given or produced, if given or produced to any employee of the Corporation in charge of the land or water side of the harbour, as the case may be.

(11) Section 35(5), (6), (10) and (11) of this Act shall *mutatis mutandis* apply to harbours.

(12) The Corporation shall in no case be liable for loss of or damage to any goods in its custody at a harbour, if the loss or damage be caused by an act of God or of hostile forces, the perils or accidents of the sea, sabotage, flood, tempest, civil commotion, riots or strikes, or for —

- (a) the loss of mass or measure of goods or the deterioration by heat, decay, rust, sweat or change of character of such goods as may be handled by the Corporation or deposited in its warehouses or on its premises, or be otherwise in its charge, or for any loss of contents of bags through sifting or for internal breakage, or deficiency in contents of unbroken packages; or
- (b) loss of or damage to castings, machinery or other goods not protected or insufficiently protected, packed or stacked, not for leakage arising from defective drums, tins or packages, or for the loss of or damage to goods by vermin or insect pests; or
- (c) loss of or injury to animals arising from inherent vice, or from any cause other than that arising from the negligence of the Corporation or its employees; or
- (d) loss of or damage to goods caused from maintaining to high or too low a temperature in cool chambers or failure of machinery or plant not due to negligence on the part

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the Corporation or its employees; or

- (e) loss of or damage to goods caused by a fire not due to negligence on the part of the Corporation or its employees:

Provided that this subsection shall not apply to goods delivered to and accepted by the Corporation for transport upon the railway and so long as the contract for transport of such goods is not fully performed.

Powers of employees of Corporation to make an arrest and agreement to render security services.

39. (1) All duly authorized employees of the Corporation may arrest any person who is reasonably suspected of having trespassed on the area of jurisdiction of the Corporation, or of having contravened any of the provisions of this Act, or of having attempted to do any of such acts.

(2) The person who makes the arrest shall as soon as possible turn over the person arrested or cause him to be turned over to any police officer to be dealt with according to law.

(3) For the purposes of this section "police officer" shall mean any member of the South West African Police Force established under section 2 of the Police Act, 1958 (Act 7 of 1958).

(4) The Corporation may, by agreement, appoint any person, body or organization to render security services for the safeguarding of the property of the Corporation or any goods held by it in custody, and the said person, body or organization shall in the rendering of such services to the Corporation, in addition to the powers conferred upon him or it by or under any other law, be vested with the powers referred to in subsections (1) and (2).

(5) The compensation payable by the Corporation for the services referred to in subsection (4) shall be determined by agreement.

Identification marks.

40. (1) The official identification mark or marks of the South African Transport Services that appeared before the commencement of this Act on goods or any article transferred to the Corporation at the commencement of this Act under section 6, shall be deemed, for the purposes of this Act, to be the official identification mark or marks, as the case may be, of the Corporation until the board shall register for the Corporation any trade mark under any provision of any other law on the registration of trade marks.

(2) When in any legal proceedings, whether civil or criminal, any question arises as to the ownership of goods or any article whereon there appears an official identification mark or trade mark as referred to in subsection (1) such goods or article shall be deemed to be the property of the Corporation, unless the contrary is proved.

(3) Any person who without any authority or sufficient reason, notwithstanding anything to the contrary contained in any law, affixes to any goods or article an official identification mark

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or trade mark of the Corporation as referred to in subsection (1) or defaces or conceals any such identification mark or trade mark, or receives, possesses, sells or delivers any goods or article whereon any such identification mark or trade mark has been affixed, shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or, in default of payment to imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment.

(4) For the purposes of this section "official identification mark" shall mean the official identification mark referred to in section 58(1) of the South African Transport Services Act, 1981 (Act 65 of 1981), declared as such.

Saving in respect of the construction of wires, pipes and other appliances by local authority at certain level crossings.

41. Nothing in this Act contained shall derogate from the right of any local authority to construct and maintain at any level crossing within the limits of its area of jurisdiction, such wires, pipes or other appliances either overhead or underground as may be required for the proper operation of any transport or other public service: Provided that no excavation on railway or harbour premises for any such purpose shall be made without the approval of the Corporation, and no such wires, pipes or other appliances shall be laid or constructed without due notice thereof to the Corporation and without the local authority taking at its expense such measures for the safety of the railway and the public travelling thereon and at the harbours as may be required in connection with the construction of such wires, pipes or other appliances.

Powers of local authorities in respect of land leased from the Corporation for certain public purposes.

42. When any land belonging to or under the control of the Corporation (including any part of the seashore or any area covered by the sea) has been leased by the Corporation to or otherwise placed at the disposal of any local authority on the condition that such land (hereinafter referred to as the "leased premises") shall, subject to the control of the local authority, be open for use by the public for specified purposes, the Cabinet may by notice in the *Official Gazette* declare that, subject to the conditions or limitations specified in the notice, the leased premises shall, for the purposes of such laws as are likewise specified in the notice, be deemed to be a public street, public place, public beach or other place of public recreation, as the case may be, under the control of the local authority, and that the local authority shall be authorized to exercise, with respect to the leased premises, all such powers as it is entitled in terms of any such law to exercise in respect of public streets, places or beaches or other places of public recreation under its control.

Warning.

43. (1) The use of a whistle, siren or hooter of a train for at least three seconds as a warning while approaching a level crossing discharges the Corporation and its employees of the legal obligation to give to any user of the crossing audible warning of the approach of the train.

(2) The use of a whistle, siren or hooter of a train shall be

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obligatory only during the hours from 05h00 up to 23h00 and no legal obligation shall be on the Corporation to give the users of a crossing audible warning of the approach of any train between 23h00 and 05h00.

(3) The use by the Corporation of a whistle, siren or hooter, at any time, in the exercise of any of its functions under this Act shall be deemed not to constitute a nuisance in law.

Application of certain provisions of Ordinance 35 of 1952 and prohibition of strikes.

44. (1) Subject to the provisions of subsection (3) of this section and subsection (1) of section 59, the provisions of the Wage and Industrial Conciliation Ordinance, 1952 (Ordinance 35 of 1952), shall *mutatis mutandis* apply to the Corporation as if the Corporation shall be a local authority as referred to in the said Ordinance.

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

(a) any reference in the said Wage and Industrial Conciliation Ordinance, 1952, to a local authority or a local authority and its employees engaged in the performance of work connected with the supply of light, power, water, sanitation, passenger transportation or the extinguishing of fires, shall be construed as a reference to the Corporation or the Corporation and its employees, respectively;

(b) subparagraph (ii) of paragraph (a) of subsection (3) of section 25 of the said Ordinance shall be deemed to be deleted;

(c) any reference in paragraph (i) of the proviso to subsection (1) of section 33 of the said Ordinance to an employee engaged upon a service such as referred to in subsection (1) of section *forty-four*, shall be construed as a reference to any employee of the Corporation;

(d) any reference in subsection (2) of section 33 of the said Ordinance to any person who is or has been performing work connected with any of the services referred to in section *forty-four*, shall be construed as a reference to any employer of the Corporation;

(e) any reference in subsection (3) of section 33, subsection (1) of section 43 or subparagraph (i)(bb) of paragraph (b) of subsection (3) or subsection (6) of section 64 of the said Ordinance to “any such service” or “services” or “a service” shall be construed as a reference to transport services as referred to in this Act;

(f) subsection (5) of section 44 of the said Ordinance shall be deemed to be deleted;

(g) section 58 of the said Ordinance shall be deemed to be substituted by the provisions of subsection (3) of this section;

(h) subsection (4) of section 70 of the said Ordinance shall be

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deemed to be deleted;

- (i) the expression "section *fifty-eight* or" in paragraph (a) of subsection (1) of section 76 of the said Ordinance, shall be deemed to be deleted.

- (3) (a) No employee of the Corporation or any other person shall instigate a strike, or incite any employee of the Corporation to take part in or to continue a strike, and no such employee shall take part in a strike or in the continuation of a strike.

- (b) When in any criminal proceedings against an employee employed in any branch or division of the Corporation for having taken part, in contravention of paragraph (a) of this subsection, in a strike or in the continuation of a strike, it is proved that such concerted action as is described in paragraph (c) of this subsection took place in that branch or division during the period covered by the charge, and that at any time during that period the accused was engaged upon work or a type of work with respect to the performance of which such a departure from standards, methods, procedures or practices as referred to in paragraph (c)(i) of this subsection had occurred, such concerted action shall be deemed to constitute a retardation of the progress of work or an obstruction of work within the meaning of the definition of "strike" contained in section 1.

- (c) The concerted action referred to in paragraph (a) is any concerted action on the part of any number of employees which —

- (i) involves a departure from standards, methods, procedures or practices which had previously been observed, maintained or adopted by those employees as their normal and regular routine in or in connection with the performance of their work;

- (ii) has resulted in a diminution in the output or a reduction in the tempo of work or a prolongation of the time normally taken to perform particular tasks in the branch or division concerned; and

- (iii) by reason of any circumstances referred to in subparagraph (ii) has had, or was likely to have if continued, a detrimental effect upon the punctuality, regularity or frequency of any of the transport services of the Corporation or upon the efficiency of the Corporation in general.

- (d) When an employee or any other person is charged under

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this section with having instigated a strike, or with having incited an employee to take part in or to continue a strike, or with having taken part in a strike or in the continuation of a strike, and refusal, failure, retardation, obstruction, breach or termination such as referred to in the definition of "strike" contained in section 1 and paragraphs (b) and (c) of subsection (2) of this section and stated in the charge, is proved, such refusal, failure, retardation, obstruction, breach or termination shall be deemed to be in pursuance of a combination, agreement or understanding and for such a purpose as referred to in the said definition and stated in the charge unless the contrary is proved;

- (e) Any employee or other person who contravenes the provisions of paragraph (a) of this subsection shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 12 months or to such imprisonment without the option of a fine or to both such fine and such imprisonment.

(4) For the purposes of this section "employee" shall include any person employed temporary or permanently by the Corporation.

Penalties for certain offences.

45. Any person who within the area of jurisdiction of the Corporation does or causes to be done any of the following acts, namely, who —

- (a) trespasses on the said area of jurisdiction and refuses to leave after being warned about that by any employee, or any person referred to in section 39(4) or any member of the South West African Police Force referred to in section 39(3) or after being so warned refuses to leave the area of jurisdiction by the route indicated by such employee, person or member or after having been once so warned to leave, again trespasses on the area of jurisdiction;
- (b) gives a false name or address to any employee or any person referred to in section 39(4) or any member of the South African Police Force referred to in section 39(3) or when called upon by any employee or such person or member to give his name and address, refuses to do so;
- (c) wilfully interferes with the comfort of any passenger, or extinguishes any lamp or light on a train or railway;
- (d) defaces the writing on any board or any notice authorized to be maintained on any railway or train;
- (e) damages any rolling-stock or other material or without authority enters or is thereon;
- (f) being a passenger, enters a train or coach or any portion thereof which is reserved by the Corporation for the use of

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another passenger or which already contains the maximum number of passengers authorized to be carried therein, and refuses to leave it when required to do so by an employee;

- (g) being a passenger, resists the lawful entry of another passenger into a train or coach or any portion thereof not reserved by the Corporation for the use of the passenger resisting, or not already containing the maximum number of passengers to be carried therein or thereon;
- (h) smokes in any place within the area of jurisdiction of the Corporation where a notice forbidding smoking at that place is displayed;
- (i) enters or leaves any train while it is in motion, or elsewhere than at the side of the coach adjoining the platform or other place designated by the Corporation for passengers to enter or leave, or opens any outer door of any coach while it is in motion;
- (j) travels or attempts to travel on or in any part of a train not intended for the use of passengers;
- (k) in the absence of a gatekeeper, omits to shut and fasten any gate on the railway so soon as such person and the animal, vehicle or any other thing (if any) under his custody has passed through the gate: Provided that the gate shall be furnished with a practical latch or fastening easily applied;
- (l) being a driver or conductor of a bus, carriage, or other vehicle or vessel, disobeys the reasonable directions of any employee or any person referred to in section 39(4) or any member of the South West African Police Force referred to in section 39(3);
- (m) enters or leaves a railway station other than by way of the authorized entrance or exit or who crawls through or climbs over a wall or over a railway boom at a level crossing or crawls through while it has been lowered for the passage of a train;
- (n) at a station or siding crosses a railway line at a place other than that allocated for that purpose or by a foot-bridge or subway;
- (o) at places other than a station or siding crosses a railway line without the authority of the Corporation other than at a place allocated for that purpose or by a foot-bridge or subway, unless, in the case of a railway line, such place is more than 250 metres from such crossing, foot-bridge or subway;
- (p) without authority distributes, affixes, scatters or hands

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out any advertisement, placard or pamphlet on any movable or immovable property, or writes, draws or affixes any words or slogans on any place on such movable or immovable property;

- (q) parks a vehicle in a demarcated space in the area of jurisdiction of the Corporation where a notice forbidding such parking other than by a permit holder or employee is displayed,

shall be guilty of an offence and liable on conviction to a fine not exceeding R250 or, in default of payment, to imprisonment for a period not exceeding 3 months, or to both such fine and such imprisonment, and in addition to such penalties such person shall, on conviction of an offence under paragraph (j) of this section, be liable to a further fine equal to the amount which would have been due or payable by such person to the Corporation for the fare in respect of the journey undertaken if he had travelled in the first, second or third class, whichever amount in the opinion of the court passing sentence is equitable or, in default of payment of such fine, to imprisonment for a further period not exceeding one month.

Penalties for certain other
classes of offences.

46. Any person who does, or causes to be done, any of the following acts, namely, who —

- (a) being a passenger, without reasonable and sufficient cause makes use of or interferes with any means provided by the Corporation for communication between passengers and an employee in charge of or concerned with the running of any train;
- (b) wilfully pulls down or damages a board or document set up or posted by order of the Corporation within the area of jurisdiction of the Corporation;
- (c) gives or offers to an employee any money or anything of value for the purpose of evading payment of any sum due under this Act;
- (d) being a passenger who to his knowledge is suffering from any infectious or contagious disease, nevertheless enters or travels upon an aircraft, train or other vehicle or vessel;
- (e) being an employee and knowing that a person is a lunatic or suffering from an infectious or contagious disease, wilfully causes that person to travel without arranging for his separation from other passengers;
- (f) fails to deliver immediately to the Corporation lost goods in terms of the provisions of section 50, found by him within the area of jurisdiction of the Corporation or removes from such area any goods which he has no right to remove therefrom;
- (g) wilfully obstructs or impedes any employee in the execu-

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tion of his duties and functions;

- (h) removes from the area of jurisdiction of the Corporation any rolling-stock, tarpaulins, tools, appliances or property of any kind, or permits any such rolling-stock, tarpaulins, tools, appliances or property to be unlawfully in his possession or on his premises;
- (i) allows any animal to enter the area of jurisdiction of the Corporation provided with fences;
- (j) drives or knowingly allows any animal to be on any railway otherwise than for the purpose of lawfully crossing the line of railway, whether he be the owner of the animal or only in charge thereof, provided that such line of railway be properly fenced;
- (k) without lawful authority deposits stones, metal, bricks, gravel, timber, glass, bottles, carcasses or any other waste within the area of jurisdiction of the Corporation,

shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or, in default of payment, to imprisonment for a period not exceeding 6 months, or to both such fine and such imprisonment.

Penalties for serious offences.

47. Any person who does or causes to be done, any of the following acts, namely, who —

- (a) does any act which obstructs or may obstruct the exploitation of any service of the Corporation or which endangers or may endanger the lives of person travelling on a railway;
- (b) without authority, moves any part of the rolling-stock on a railway or places or leaves the same on any part of a railway;
- (c) without authority moves any signals, indicators, points, rods, wires, sleepers, rails, stop blocks or machinery on a railway or shows any signal which may probably mislead;
- (d) without authority destroys or damages any movable or immovable property in the area of jurisdiction of the Corporation or removes it therefrom;
- (e) attempts or instigates the doing of, or assists or aids in doing, any of the acts mentioned in this section;
- (f) without authority moves, removes, covers, damages, interferes or tampers with, defaces or paints, writes or draws upon any fire alarm, telephone, apparatus, board, plate or sign used for combating fires;
- (g) uses any fire alarm, telephone or other apparatus for the

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transmission of alarms, calls or signals relating to fire for any purpose other than the transmission of a *bona fide* fire alarm or fire call, or in any other way gives a false fire alarm;

- (h) without authority sells, offers for sale or distributes without charge newspapers or other literature or food-stuffs or merchandise of any description in the area of jurisdiction of the Corporation,

shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or, in default of payment, to imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment.

Notice of claims.

48. Notwithstanding anything to the contrary contained in any law, no claim against the Corporation shall be enforced and the Corporation shall not be liable unless the claim has been lodged in writing, by hand or registered post, with the Corporation within 3 months from the date on which it became due: Provided that if a competent court is satisfied on application being made to it, which application shall be made 3 months before the expiration of the relevant period of prescription in terms of the Prescription Act, 1969 (Act 68 of 1969), that the Corporation shall not be prejudiced by reason of failure by the plaintiff or applicant to so lodge such claim within the said 3 months and that, having regard to special circumstances, the plaintiff or applicant could not reasonably have been expected so to have lodged such claim within such period, such court may grant the plaintiff or applicant special leave to institute such claim, and the court may make such order as to the costs of the application as it may deem reasonable.

Control of road traffic.

49. The Road Traffic Ordinance, 1967 (Ordinance 30 of 1967), shall apply within the area of jurisdiction of the Corporation and for the purposes of any criminal prosecution in terms of the said Ordinance, such area of jurisdiction shall be deemed to be a public road.

Lost property.

50. (1) When property is found within the area of jurisdiction of the Corporation which evidently has been lost, forgotten or left behind (hereinafter referred to as "lost property") by the owner or other person that may be entitled to such property (hereinafter referred to as the "rightful owner") the person finding such property shall immediately hand it over to the Corporation by handing it in at the nearest office of the Corporation.

(2) Lost property handed over to the Corporation in terms of this section, shall in the case of property other than negotiable instruments, coins and bank-notes, be stored in a warehouse for the account of the rightful owner, and in the case of negotiable instruments, coins and bank-notes shall be paid into an appropriate suspense account for the account of the rightful owner: Provided that the Corporation shall not be liable for any loss of or damage to lost property thus stored in a warehouse, howsoever caused.

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(3) If lost property handed over to the Corporation in terms of this section is not claimed by the rightful owner within 3 months from the date on which it was handed over to the Corporation, the rightful owner shall be deemed to have relinquished the lost property and such property shall be sold at a public auction: Provided that —

- (a) negotiable instruments, coins and bank-notes shall, after expiration of the said period of 3 months, be deemed to be the property of the Corporation;
- (b) perishable lost property may be sold at any time and in any manner after being handed over;
- (c) worthless lost property may be destroyed at any time after being handed over;
- (d) lost property which in terms of the Customs and Excise Act, 1964 (Act 91 of 1964), is due to any competent authority, shall be handed over to that authority after expiration of such period of 3 months.

Construction of lines of railway, harbours and harbour works.

51. No line of railway for the conveyance of public traffic and no harbour or similar work shall be constructed or acquired without the prior approval of the Cabinet: Provided that such approval shall not be required for —

- (a) the construction of sidings or short branch lines to mines, stores, warehouses or other works or premises, if such sidings or branch lines are not intended for the conveyance of public traffic;
- (b) the construction of any line of railway, not exceeding 5 kilometres in length, which shall be required for purposes to facilitate the movement of trains and which shall —
 - (i) provide a connection between two existing authorized lines of railway; or
 - (ii) serve as an avoiding line between two points on the same authorized line of railway;
- (c) the construction of a line of railway intended to provide access between a marshalling yard and one or more authorized lines of railway over the shortest practicable route;
- (d) the doubling or any further multiplication of the tracks of any existing authorized line of railway.

Regulations.

52. (1) The Cabinet may, after consultation with the board, make regulations which are not inconsistent with this Act, relating to —

- (a) the supply of refreshments and intoxicating liquor by the Corporation in or on its vehicles, trains, aircraft, vessels or premises;
- (b) the control and management of harbours including any

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anchorage, dock or basin, and the entrance thereto, the prevention or removal of any obstacles or obstructions therein, and the prevention from damage of any works, buoys, dredgers, ships or other things connected therewith;

- (c) the erection of buildings or other structures, or of posts or poles or signals or beacons at any harbour;
- (d) the control of all ships entering or within any harbour, or coming alongside any jetties, piers, quays, or wharves, or anchoring or mooring within the limits of any harbour, and with due regard to the provisions of the Merchant Shipping Act, 1951 (Act 57 of 1951), the taking of measures for the prevention of ships from leaving any harbour if overloaded or improperly loaded or 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 any ship is unseaworthy;
- (e) the exemption in whole or in part from wharfage dues and light dues and other harbours dues and charges;
- (f) the raising, removal, detention or destruction of stranded ships and their cargoes and appurtenances within the area of the jurisdiction of the Corporation, the payment of fines, expenses of sale and other charges incurred by the Corporation in connection therewith and the manner whereupon the proceeds of sale shall be disposed of;
- (g) the promotion of efficiency and good order in the pilot service, and the service on the ships of the Corporation or works connected with any harbour or lighthouse, lifeboat or lifesaving apparatus, and the provision for the examination, registration and licensing of pilots, and the regulating of the charges to be made by pilots, their duties and obligations;
- (h) with due regard to the provisions of the Merchant Shipping Act, 1951 (Act 57 of 1951), the licensing and control of tugs, launches, hulks, fishing or ferry boats or other vessels lying in a harbour or making use thereof and the charges to be paid to the Corporation for the licensing of such vessels and for the right to lie in the harbour or to make use thereof;
- (i) the licensing of ferrymen, boatmen, carriers, porters, stevedores, landing agents, forwarding agents, shipping agents, baggage and parcels agents, contractors for the supply of water or ballast, or other persons involved in harbour work, including the power to prescribe that any such licence may be issued or renewed subject to such conditions as the Corporation may deem necessary to

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impose in the interests of the safe, orderly and efficient harbour service, the fees payable in connection with the issue or renewal of such licences, the charges leviable by, and the duties and hours of attendance or work of, such persons other than carriers;

- (j) the admission by way of any licence or other concession on to the wharves, docks, jetties or other works of any harbour of any hotel representatives, landing agents or other persons soliciting patronage from passengers on ships arriving at any such harbour;
- (k) the duties and conduct while within a harbour of taxi drivers, carriers and other persons who are not in the employment of the Corporation but who ply for hire to or from any harbour;
- (l) the keeping of accounting records by the Corporation;
- (m) the issuing of share certificates and the transfer of shares of the Corporation;
- (n) all matters which under this Act are required or permitted to be prescribed;
- (o) such other matters as are necessary or useful to be prescribed for the achievement of the objects of the Corporation.

(2) The regulations may provide penalties for any contravention thereof or failure to comply therewith and may also impose different penalties in case of a second or subsequent contravention or non-compliance.

(3) When any contravention of or failure to comply with any such regulation causes damage to any property under the management or control of the Corporation, the person causing the damage shall, in addition to any penalty that may be imposed under the regulations, be liable to compensate the Corporation.

(4) The managing director shall keep at his office a copy of all regulations in force at that point of time, and shall allow any person to inspect such regulations free of charge.

(5) When the port captain or other authorized employee of the Corporation boards or goes alongside any ship arriving at any harbour, he shall inform the master of the ship where he may inspect the regulations referred to in subsection (4).

Liquidation of Corpora-
tion.

53. The Corporation shall not be wound up or liquidated except by or under the authority of an Act of the Assembly.

Prohibition on use of name
of Corporation.

54. (1) No person shall carry on business, and no company

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shall be registered under the Companies Act under the name, or the translated or shortened form of a name, which is the same as that of the Corporation or so nearly resembles it, that it is calculated to deceive.

(2) Any person who is registered or carries on business in contravention of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000.

Application of Ordinance
13 of 1978.

55. (1) The provisions of sections 5 to 19 of the Expropriation Ordinance, 1978 (Ordinance 13 of 1978), shall *mutatus mutandis* apply in respect of the exercise by the Corporation of the power to expropriate or take property conferred upon it by this Act.

(2) For the purposes of subsection (1), any reference in the Expropriation Ordinance, 1978, to the Cabinet or the State shall be deemed to be a reference to the Corporation: Provided that any decision of the Corporation under section 6(4) or 18(1) of that Ordinance as so applied, and the determination of the rate of interest contemplated in section 9(3) of that Ordinance as so applied, shall be subject to approval by the Cabinet.

(3) The powers vested in the Corporation by virtue of the provisions of subsection (2), excluding any power referred to in section 19 of the said Expropriation Ordinance, 1978, may also be exercised by the managing director of the Corporation and in connection with moveable property urgently required in an emergency, also by any employee of the Corporation whose duty it is to take measures to deal with the emergency.

Application of other acts.

56. (1) (a) No provision of the Banks Act, 1965 (Act 23 of 1965), or, subject to the provisions of paragraph (b) of this subsection and the provisions of sections 2(3) and 19 of this Act, of the Companies Act, shall be applicable in relation to the Corporation.

(b) The Cabinet may, on request of the board, by way of notice in the *Official Gazette* declare that any provision of the Companies Act which is not consistent with the provisions of this Act, shall apply in relation to the Corporation with such modification which it on request of the board may determine, and it may on request of the board amend or withdraw any such notice.

(2) (a) Unless it would in any particular case obviously be inappropriate and subject to any provisions to the contrary in this Act contained, for the purposes of any law in force in the territory at the commencement of this Act, any reference in such law —

(i) to the South African Transport Services, the Railway Administration, the Administration of the South African Railways and Harbours, the Department of Railways and Harbours or the South African Rail-

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ways and Harbours Administration by whatever name it may be known, shall be construed as a reference to the Corporation;

(ii) to officials, servants or employees of the Transport Services, Administration or Department referred to in subparagraph (i), shall be construed as a reference to employees of the Corporation;

(iii) to the State or any government whereby is included or deemed to be included the said Transport Services, Administration or Department, shall be construed as a reference to the Corporation;

(iv) to the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act 70 of 1957), or the South African Transport Services Act, 1981 (Act 65 of 1981), shall be construed as a reference to this Act.

(b) The provisions of paragraph (a) shall not apply in relation to such provisions of any law so referred to as the Cabinet may determine, to such extent or in relation to such matter and with effect from such date (which may be a date earlier than the date of the determination) as the Cabinet may determine and made known by the Cabinet by notice in the *Official Gazette*.

(c) Anything done under any provision of any law referred to in paragraph (a) prior to the amendment of that provision by this Act, shall be deemed to have been done under the corresponding provision as amended by paragraph (a).

(d) For the purposes of paragraph (a), the Railways and Harbours Pension Amendment Act, 1941 (Act 26 of 1941), the Railways and Harbours Pensions Act, 1971 (Act 35 of 1971), the Railways and Harbours Pensions for Non-Whites Act, 1974 (Act 43 of 1974), and the Conditions of Employment (South African Transport Services) Act, 1983 (Act 16 of 1983), and any amendment thereof, shall at the commencement of this Act be deemed not to be in force in the territory.

Outstanding expropriations, matters in relation to road transportation and legal proceedings.

57. (1) If, prior to the commencement of this Act —

(a) any expropriation has been commenced with; or

(b) proceedings have been instituted for the determination of compensation,

in terms of any power conferred by the South African Transport Services Act, 1981 (Act 65 of 1981), repealed by section 59, to expropriate or to take any property in the territory, such expropriation or proceedings shall, at the commencement of this Act, be proceeded with in the name of the Corporation in accordance with the provisions of the Expropriation Ordinance,

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1978 (Ordinance 13 of 1978), as applied by this Act, as if such expropriation or proceedings were commenced with or instituted by the Corporation.

(2) Notwithstanding anything to the contrary contained in this Act or any other law, any application or proceedings or matter in relation to any road transportation in the territory, before any competent authority, to which the South African Transport Services is a party and which is not finally disposed of at the commencement of this Act, shall, without derogating from any of the provisions of this Act or the Road Transportation Act, 1977 (Act 74 of 1977), be proceeded with in the name of the Corporation, and any rights or obligations in relation to such application or proceedings or matter shall be exercised by the Corporation.

(3) (a) All legal proceedings by or against the South African Transport Services in respect whereof the necessary service of process therein may be effected on the Regional Manager in the territory as contemplated in section 3(2) of the South African Transport Services Act, 1981 (Act 65 of 1981), repealed by section 59, shall, subject to the provisions of paragraph (c), if such legal proceedings had already been instituted but not finally disposed of at the commencement of this Act, be deemed to have been instituted in the name of or against the Corporation, as the case may be, and such legal proceedings shall be so proceeded with in the name of the Corporation.

(b) Such legal proceedings which at the commencement of this Act had not been instituted, shall after such commencement be instituted only against the Corporation.

(c) Notwithstanding the South African Transport Services Act, 1981, having been repealed by this Act, the provisions of section 64 of the said South African Transport Services Act, 1981, shall *mutatis mutandis* apply in respect of all claims arising prior to the date of the commencement of this Act.

Powers as to pre-establishment agreements and other acts.

58. (1) Notwithstanding anything to the contrary in any law contained, the board established by section 7 may, with the object of enabling the Corporation to function properly at its establishment, conclude or ratify any agreements (including agreements concerning the appointment, remuneration and other conditions of service of employees of the Corporation), or do anything else or perform any other acts it deems necessary or expedient before the date of establishment of the Corporation in order to achieve such object.

(2) Notwithstanding anything to the contrary in any law contained, the Cabinet may, so as to achieve the object referred to in subsection (1) —

(a) in terms of a general or special assignment, assign the administration of any provision of any law which entrusts to the Cabinet any power, duty or function by virtue of the provisions of the Executive Powers Transfer Proclamation (South African Transport Services), 1986 (Proclama-

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tion R.52 of 1986), to the board referred to in section 7;

(b) render such guarantees or financial assistance as contemplated in section 28 of this Act.

(3) Anything done under subsection (1) or (2), shall, with effect from the date of establishment of the Corporation, be deemed to have been done by or for the Corporation, and shall with effect from such date be ratified, and be regarded as being adopted and made binding upon and enforceable by the Corporation as if it had been duly established at the time when the agreements or acts or powers, duties or functions, or guarantees or assistance referred to in this section were entered into, exercised, performed or rendered, as the case may be.

Repeal and amendment of laws, and savings.

59. (1) Subject to the provisions of subsection (2), the laws specified in the Second Schedule are hereby repealed or amended to the extent set out in the third column of that Schedule.

(2) Any regulation, rule, directive, notice, order, prohibition, authority, delegation, agreement, approval, appointment, exemption or document promulgated, issued, made, done, published, imposed, concluded, given or granted, and any other act performed in terms of any of the laws repealed or amended by subsection (1), and which relates to or is connected with any power, duty or function exercised or performed by any competent person or authority in or in respect of the territory, shall, if and in so far as it is not repugnant to the provisions of this Act, be deemed to have been promulgated, issued, made, done, published, imposed, concluded, given, granted or performed in terms of or under the corresponding or allied provisions of this Act, and shall remain in force until a competent person or authority repeals, deletes, withdraws, substitutes or otherwise cancels it.

Short title and commencement.

60. This Act shall be called the National Transport Corporation Act, 1987, and the provisions thereof, excluding the provisions of sections 7, 8, 9, 10, 11(1), (3), (4) and (5), 12, 13, 14, 15, 16, 18, 28 and 58(1) and (2), shall come into operation on a date to be determined by the Administrator-General by proclamation in the *Official Gazette*.

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The area boarded by a line from Angra Point to a point 1 097 metres due north thereof; thence by a line from the said point to the southern shore extremity at North-East Point, including the foreshore therein, the jetties, harbour works and harbour lands, but excluding Penquin Island, Seal Island and the territorial waters of any foreign country.

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SECOND SCHEDULE

LAWS REPEALED OR AMENDED

(Section 59(1))

| No. and year | Short title | Extent of repeal or amendment |
|----------------------|--|---|
| Ordinance 35 of 1952 | Wage and Industrial Conciliation Ordinance 1952 (Ordinance 35 of 1952) | The amendment of section 2 by the deletion of the expression "including its Department of Railways and Harbours", wherever it occurs. |
| Act 37 of 1955 | Railway Expropriation Act, 1955 (Act 37 of 1955) | The repeal of section 15. |
| Act 72 of 1967 | Medical Schemes Act, 1967 (Act 72 of 1967) | <p>The amendment of section 2 —</p> <p>(a) by the insertion in subsection (1) after paragraph (b) of the following paragraph:</p> <p style="padding-left: 40px;">“(bA) shall, subject to the provisions of subsection (2A), apply in relation to any scheme or sick benefits provided by the National Transport Corporation Limited established under section 2 of the National Transport Corporation Act, 1987, to its employees, only if the Cabinet has by notice in the <i>Official Gazette</i> declared the said provisions to be so applicable;”;</p> <p>(b) by the substitution in paragraph (h) of subsection (1) for the expression “(b), (c), (d), (e), (f) or (g)” of the expression “(b), (bA), (d), (f) or (g)”;</p> <p>(c) by the substitution in subsection (2A) for the expression “(1)(b), (d), (f) or (g)” of the expression “(1)(b), (bA), (d), (f) or (g)”;</p> |

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| No. and year | Short title | Extent of repeal or amendment |
|---------------------------|---|---|
| | | (d) by the substitution in subsection (3) for the expression "(1)(b), (d), (f) or (g)" of the expression "(1)(b), (bA), (d), (f) or (g)". |
| Act 63 of 1975 | Expropriation Act, 1975 (Act 63 of 1975) | The repeal of section 4. |
| Act 74 of 1977 | Road Transportation Act, 1977 (Act 74 of 1977) | The amendment of section 1 by the insertion in the definition of "railway service" after the word "Parliament" of the expression "or the National Transport Corporation Act, 1987". |
| Ordinance 13 of 1978 | Expropriation Ordinance, 1978 (Ordinance 13 of 1978) | The repeal of section 21(3). |
| Act 65 of 1981 | South African Transport Services Act, 1981 (Act 65 of 1981) | The repeal of the whole. |
| Act 6 of 1982 | South African Transport Services Amendment Act, 1982 (Act 6 of 1982) | The repeal of sections 18, 19 and 20. |
| Act 13 of 1983 | South African Transport Services Amendment Act, 1983 (Act 13 of 1983) | The repeal of sections 9, 10, 11, 12, 13, 14 and 15. |
| Act 17 of 1983 | South African Transport Services Finance and Accounts Act, 1983 (Act 17 of 1983) | The repeal of the whole. |
| Act 5 of 1984 | South African Transport Services Amendment Act, 1984 (Act 5 of 1984) | The repeal of sections 6, 7, 8, 9, 10 and 13. |
| Act 93 of 1984 | Second South African Transport Services Amendment Act, 1984 (Act 93 of 1984) | The repeal of the whole. |
| Act 44 of 1985 | South African Transport Services Amendment Act, 1985 (Act 44 of 1985) | The repeal of sections 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 30 and 31. |
| Act 46 of 1986 | South African Transport Services Amendment Act, 1986 (Act 46 of 1986) | The repeal of the whole. |
| Proclamation R.52 of 1986 | Executive Powers Transfer Proclamation (South African Transport Services), 1986 (Proclamation R.52 of 1986) | The repeal of whole. |