

THE RAILWAYS BILL, 2024

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THE RAILWAYS BILL, 2024

A Bill for

AN ACT of Parliament to establish Kenya Railways Corporation, to establish the Railway Regulatory Authority as the railway economic and safety regulator; to provide for open access, to make provision for infrastructure managers and train operators and for connected purposes.

ENACTED by Parliament of Kenya, as follows—

| | PART I—PRELIMINARY PROVISIONS |
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| Short title. | 1. This Act may be cited as the Railways Act, 2024. |
| Interpretation. | 2. In this Act, unless the context otherwise requires— “access certificate” means a certificate issued by the infrastructure manager granting infrastructure capacity rights; “animals” means animate things of every kind except human beings; “authorized employee” means an employee authorized by the Authority or a holder of a licence issued under this Act to exercise powers or perform the duties in respect of which the expression is used; “Authority” means the Railways Regulatory Authority established under section 52; “Board of the Authority” means the Board established under section 54; “Board of the Corporation” means the Board established under section 8; “charges” means all sums received or receivable, charged or chargeable, for, or in respect of any services performed or facilities provided under this Act; “consignee” means a person to whom goods accepted for carriage by the rail carrier are addressed; “consignment” means one or more package of goods or a quantity of loose goods tendered for carriage by a consignor to a consignee by the rail carrier; “consignor” means a person who has tendered goods which have been accepted for carriage by rail carrier; “cabinet secretary” means the Cabinet Secretary for the time being responsible for railways; “Corporation” means the Kenya Railways Corporation established under section 5; “civil infrastructure” means— (a) track formation and drainage; |

(b) fixed structures beside, over or under the track or otherwise associated with railway, including supports for overhead electric traction equipment and supports for signalling and telecommunications equipment;

“dangerous” means any person, goods or thing likely to cause harm or to have adverse consequences on safe movement of a train;

“director-general” means the Director General appointed under section 60;

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

“excess infrastructure capacity” means any potential of scheduled train tracks which—

- (a) is not utilized for provision of rail services; and
- (b) is declared as such by the Infrastructure Manager;

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

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

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

“Kenya railways network” means the whole or any portion of the network that is owned, entrusted or vested in the Corporation and may be available for use by the train operators, passengers or freight services for hire or reward;

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

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

“infrastructure manager” means a person—

- (a) who owns, develops, manages, maintains and repairs a railway line;
- (b) who operates control and safety systems;
- (c) who maintains its network; and
- (d) who controls railway traffic on the network;

“luggage” means such articles of personal apparel or for personal use, together with their containers, as are usually carried by passengers for their personal use or convenience,

but does not include goods which, though carried in any such container or otherwise, are not intended for any such use;

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

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

“network operator” means an entity that is responsible for management and operation of a network.

“network statement” means a statement prepared and published by a network operator in accordance with section 84;

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

“open access” means availability of railway infrastructure for use by multiple operators;

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

“perishable goods” means goods liable to rapid deterioration and includes fish, fruit, vegetables, potatoes, plants, bread, meat, game, butter, eggs, milk, cheese, birds, poultry, small animals, and any other thing as may be declared by the rail carrier as perishable goods;

“public railway network” means—

- (a) the network developed, constructed, maintained and operated by the Corporation; or
- (b) any other public entity which may be vested with such responsibility by an Act of Parliament;

“rail carrier” means a person who carries passengers or goods for hire or reward on a railway;

“private railway line” means the whole or any portion of a line of railway, not being part of the Kenya railways network owned and managed by a public or private entity—

- (a) operated for the carriage thereon of goods or passengers for hire or reward; or

(b) that crosses at least one public road;

“railway operating licence” means a person who holds a railway operating licence as provided under section 74;

“railway line” means –

(a) The Kenya railway network; and

(b) The private railway lines;

“private railway operating license” means a license issued by the Authority to a private railway line operator under section 112;

“railway land” means the land reserved for railways;

“railways appeals board” means the Railway Appeals Board established under section 131;

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

“railway operating licence” means a licence granted by the Authority to an operator pursuant to section 74 ;

“railway infrastructure” includes civil infrastructure, electric traction infrastructure and train control system, facilities other than rolling stock necessary for a railway to operate efficiently and safely including railway track, associated track structures, over or under track structures, supports for railway equipment or for items associated with use of a railway, tunnels, bridges, stations, platforms, signalling systems, communication systems, electric traction infrastructure, buildings, workshops and associated equipment;

“railway worker” means a person working on railways and employed by the Corporation, the Authority or any holder of license issued under this Act;

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

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

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

“safety authorisation” means a safety authorisation issued by the Authority under section 119;

“safety certificate” means a safety certificate issued by the Authority to an operator in accordance with section 116;

“safety critical worker” means a person who carry out safety critical tasks with direct effects on railway operation and maintenance;

“safety critical tasks” means activities comprising: driving trains; dispatching trains; signalling trains; installation of components on railway tracks, rolling stock and signalling systems; marshalling and shunting of trains; loading and offloading trains; protection of persons in track sections;

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

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

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

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

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

“train operator” means a person in control of the movement rolling stock on a network and holds a railway operating licence under section 74;

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

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

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| | <p>“train control systems” means signalling and telecommunications equipment provided and used as control equipment and has a central supervising system, and line-level systems managing the station-level sub-systems;</p> <p>“warehouse” means any building, place, wagon or vehicle, when used by the rail carrier for the purpose of warehousing or depositing goods;</p> <p>“working timetable” means the data defining all planned train and rolling-stock movements which will take place on the relevant infrastructure during the period for which it is in force.</p> |
| <p>Application of the Act</p> | <p>3. The provisions of this Act or any regulations made thereunder shall unless expressly excluded apply to -</p> <ul style="list-style-type: none"> (a) development of the railway and associated infrastructure; (b) railway operations; (c) railway safety and economic regulation; and (d) railway sector training. |
| <p>Object and purpose of the Act.</p> | <p>4. The object and purpose of this Act shall be to provide for —</p> <ul style="list-style-type: none"> (a) enhancing effectiveness and efficiency in the provision of services and operations of the railway sector; (b) development of railways including establishing urban public transportation; (c) safety and economic regulation of the railways including the regulation of the railway transport enterprise on commercial basis; (d) open access to the railway infrastructure for operators; (e) training and research for the purpose of encouraging innovations in the railway sector; (f) effective and efficient delivery of services in the operations of the railways; (g) compliance with the relevant Regional and International Conventions on transport that guides on the economic, safety and environmental sustainability of railway transport; (h) fostering the development of the railways through provision of substantial financial and technical support; (i) promoting fairness and competitiveness in railway operations; and (j) enhancing the safety and security of the public and railway workers, and the protection of property in railway operations. |

| PART II – THE KENYA RAILWAY NETWORK | |
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| Establishment of The Kenya Railways Corporation | |
| Establishment of the Corporation. | <p>5. (1) There is established a Corporation known as Kenya Railways.</p> <p>(2) The Corporation shall be a body corporate with perpetual succession, and a common seal and shall, in its corporate name, be capable of—</p> <ul style="list-style-type: none"> (a) suing and being sued; (b) taking, purchasing and disposing of movable and immovable property; (c) borrowing money in accordance with the relevant law; (d) entering into contracts; and (e) doing such other things as may be necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate. <p>(3) The headquarters of the Corporation shall be in Nairobi.</p> |
| Functions of the Corporation. | <p>6. (1) The functions of the Corporation shall be to—</p> <ul style="list-style-type: none"> (a) plan, develop, construct and operate railway infrastructure and other associated commercial and logistics hubs or desirable facilities required within the operational corridor for the purposes of the Corporation; (b) maintain, repair and improve the Kenya Railways network and associated commercial and logistics hub facilities directly or through a subsidiary or subsidiaries; (c) provide railway transport services for commuter, long distance passenger and freight; (d) utilize railway infrastructure capacity or allocate the capacity to train operators to operate on its behalf; (e) allocate infrastructure capacity to operators; (f) control and manage traffic on the Kenya Railways network; (g) undertake training in the railway sector through the Railway Training Institute established under section 51; (h) carry passengers or goods for hire or reward directly or through a subsidiary or subsidiaries which shall be established for purposes of commuter, long distance passengers and freight operations; (i) establish and manage the Kenya Railways Museum; |

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| | <p>(j) provide inland water transport as an interconnecting link on waterways between two railway networks;</p> <p>(k) advise the Cabinet Secretary on national policies with regard to the rail transport system; and</p> <p>(l) implement policies relating to rail transport.</p> <p>(2) The Corporation may assign all or part of its functions under this section to any other person, either by way of a concession agreement, management contract or otherwise.</p> |
| <p>Powers of the Corporation.</p> | <p>7. (1) The Corporation shall have power—</p> <p>(a) to develop, own and manage the non-operational landed assets on commercial basis directly or through a subsidiary which shall be established for that purpose;</p> <p>(b) to carry on any business necessary or desirable for the purposes of the Corporation;</p> <p>(c) to acquire, construct, manufacture, maintain or repair waterways or electric generating plants or apparatus necessary or desirable for the supply or transmission of water or of electric energy for the purposes of the Corporation and may supply water or electric energy to any person or the national grid;</p> <p>(d) to alter the course of, or raise or lower the level of, any water course or road if such alteration, raising or lowering is necessary for the purposes of the Corporation, subject to approval by the respective Cabinet Secretary;</p> <p>(e) to determine, impose and levy rates, fares, charges, dues or fees for any service performed by the Corporation or for the use by any person of the facilities provided by the Corporation or for the grant to any person of any licence, permit, or certificate;</p> <p>(f) to prohibit, control or regulate—</p> <p>(i) the use by any person of the services performed, or the facilities provided, by the Corporation; and</p> <p>(ii) the presence of any person, vehicle or goods within any inland waterways port or any premises occupied by the Corporation for the purposes of the Corporation.</p> <p>(g) to sell, let or otherwise dispose of any property, movable or immovable, which by the resolution of the Board is not necessary for the purposes of the Corporation in accordance with applicable laws;</p> |

- (h) to act as an agent for any person engaged, whether within Kenya or elsewhere, in the performance of the services or the provision of facilities of a kind similar, or complimentary to, those performed or provided by the Corporation;
- (i) to enter into agreement with any person—
 - (i) for the supply, development, construction, manufacture, management maintenance or repair by that person of any property, movable or immovable, necessary or desirable for the purposes of the Corporation;
 - (ii) for the performance or provision by that person of any of the services or the facilities which may be performed or provided by the Corporation; and
 - (iii) for the payments, collection or apportionment of any fares, rates, charges or any other receipts rising out of the performance or the provision by that person of any such services or facilities and for such purposes, to finance or assist in financing the activities of the person, whether by way of loan, the holding of stocks, shares or securities, the guaranteeing of interests or the retention of any stocks, shares or securities or otherwise.
- (j) to enter into an agreement with any person carrying on business as a carrier of passengers or goods, whether within Kenya or elsewhere, providing for the carriage of passengers or goods, by or on behalf of the Corporation, and of that person, under one contract or at a through fare or rate;
- (k) to hold shares in any company or other body and to establish or acquire any subsidiary company.

Where the Corporation acquires or establishes a subsidiary company, it shall become the parent or holding company and shall prepare consolidated accounts.
- (l) subject to the relevant laws, enter any land—
 - (i) to survey, excavate, take away any matter or timber on such land;
 - (ii) prevent accidents either through cutting down or removing any tree or obstruction, other than a building, which poses danger or risk to the railways;
or
 - (iii) alter positions of pipes for the supply of gas, water or compressed air or oil, or the position of fibre cable, electricity cables, telephone or telegraphic wire.
- (m) to develop mechanisms for cooperation to achieve seamless transport operations across the transport network;

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| <p>Cap. 430.</p> | <p>(n) to enter into any arrangement with the Kenya Ports Authority subject to the approval by the Board, which will promote or secure the provision, or improved provision, of any service or facilities which may separately provide and without prejudice to the generality thereof any such arrangement or agreement may include provisions relating to —</p> <ul style="list-style-type: none"> (i) the use by either party of the facilities or equipment maintained by the other; (ii) the temporary employment of staff by the other on secondment or otherwise; (iii) the charges made in respect of the use of any service or facility to which the arrangement or agreement relates; (iv) the financing of any project, by either or both parties; (v) undertake research and technology development in the rail transport sector; (vi) the joinder in the arrangement or agreement by any other person; and <p>(o) to enter into any arrangement with the relevant State Corporation subject to the approval by the Board, which will promote or secure the provision or improved provision of any service or facilities relating to railway transport.</p> <p>(2) In performing its powers pursuant to subsection (1)(a), the Corporation may, with the consent of, and under conditions agreed by, the Government—</p> <ul style="list-style-type: none"> (a) sell, let or otherwise dispose of any property; or (b) enter into Public Private Partnerships in accordance with the Public Private partnerships Act. <p>(3) The powers conferred on the Corporation under this section to construct or execute any works, shall enable the Corporation to construct or execute works on—</p> <ul style="list-style-type: none"> (a) land vested on the Corporation or on land placed at its disposal by the Government for the purposes of the Corporation; (b) in the case of land not so vested in, or placed at the disposal of, the Corporation, only with the agreement of the owner of the land on which such works are to be constructed or executed; or (c) any other land required by the Corporation which shall be acquired in accordance with the relevant law. |
| <p>Composition of the Board of the Corporation.</p> | <p>8. (1) The management of the Corporation shall vest on the Board comprising of—</p> <ul style="list-style-type: none"> (a) a chairperson, appointed by the President; (b) the Cabinet Secretary responsible for matters relating to finance; |

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| | <p>(c) the Principal Secretary responsible for Railway matters;</p> <p>(d) the Managing Director of Kenya Railways;</p> <p>(e) the Managing Director of the Kenya Ports Authority;</p> <p>(f) Six persons, not being public officers or employees of the Corporation, appointed by the Cabinet Secretary, by virtue of their knowledge of and experience in railways or transport matters.</p> <p>(2) The persons appointed under subsection (1) (b), (c) and (e) may designate, in writing, a person to represent them in any meeting of the Board.</p> <p>(3) The Cabinet Secretary shall by notice in the Gazette appoint the members of the Board referred to under subsection (1) (f).</p> <p>(4) The chairperson and members of the Board shall be appointed with due regard to regional and gender balance, representation from youth or persons living with disabilities for a term of three years' renewable once.</p> <p>(5) The Board may co-opt any member from the Government or any state agency as may be required from time to time depending on the subject matter.</p> <p>(6) The conduct of business and affairs of the Board of the Corporation shall be as set out in the Second Schedule.</p> |
| Functions of the Board of the Corporation. | <p>9. (1) It shall be the duty of the Board to provide a coordinated and integrated system of—</p> <p>(a) rail transport services;</p> <p>(b) rail transport services to link waterways between two railway networks;</p> <p>(c) rail operations within the ports and inland container depots; and</p> <p>(d) auxiliary road services in connection therewith.</p> <p>(2) The performance of the duty referred to in subsection (1), shall include a general duty to secure—</p> <p>(a) the full development, consistent with economy, of the undertaking of the Corporation;</p> <p>(b) the undertaking of the Corporation is operated efficiently, economically and with due regard to safety;</p> |

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| <p>Cap 412A</p> | <p>(c) the financial administration of the Corporation is conducted in accordance with Part II of this Act;</p> <p>(d) the Corporation provides all reasonable facilities for the carriage of passengers and goods; and</p> <p>(e) no particular person or body is given undue preference or subjected to any undue disadvantage.</p> <p>(3) The Board shall—</p> <p>(a) oversee the administration and management of the affairs of the Corporation and the subsidiaries;</p> <p>(b) formulate policies and strategies of the Corporation and the subsidiaries and oversee their implementation thereof;</p> <p>(c) approve the annual budget of the Corporation and the subsidiaries;</p> <p>(d) approve alteration in salaries, wages or other terms and conditions of service of employees of the Corporation and its subsidiaries in consultation with the Salaries and Remuneration Commission;</p> <p>(e) approve any individual capital work whose estimated cost does not exceed what is provided under the Public Finance Management Act;</p> <p>(f) establish, from among its members, committees for the purpose of the Corporation and delegate functions thereto;</p> <p>(g) establish such campuses or centers for training and capacity development as are necessary and in the furtherance of railway, transport and logistics research and training;</p> <p>(h) consider legislative proposals and recommend their enactment to the Cabinet Secretary;</p> <p>(i) recommend to the relevant body any alteration in organization or establishment of the Corporation other than an alteration referred to in section 10(d); and</p> <p>(j) give directions to the Managing Director.</p> |
| <p>Powers of the Managing Director.</p> | <p>10. Subject to the directions of the Board of the Corporation, the Managing Director may—</p> <p>(a) establish and operate rail, auxillary roads and inland waterways transport services and facilities relating thereto;</p> <p>(b) approve recurrent expenditure within limits determined by the Board;</p> |

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| | <p>(c) recommend to the Board any alteration in salaries, wages or other terms and conditions of service of employees of the Corporation not involving expenditure in excess of the limits determined by the Board within its powers under paragraph (b) of section 9 (3) (d);</p> <p>(d) recommend to the Board any alteration in the establishment of the Corporation other than an alteration involving a major reorganization or a substantial reduction in the number of employees; and</p> <p>(e) allocate functions to employees.</p> |
| <p>Qualifications of the Board members.</p> | <p>11. (1) A person shall be qualified to be appointed as the chairperson, if that person—</p> <p>(a) is a citizen of Kenya;</p> <p>(b) holds a degree from a university recognised in Kenya in any of the following fields; engineering, management, economics, law, business, public administration or finance;</p> <p>(c) has at least fifteen years’ experience in the public service or as a practitioner in a relevant profession or industry; and</p> <p>(d) satisfies the requirements of Chapter Six of the Constitution.</p> <p>(2) A person shall be qualified to be appointed as a member of the Board under section 8(1)(f) if that person—</p> <p>(a) is a citizen of Kenya;</p> <p>(b) holds a degree from a university recognised in Kenya in any of these fields; engineering, management, economics, law, business, public administration or finance;</p> <p>(c) has at least ten years’ experience in the public service or as a practitioner in a relevant profession or industry; and</p> <p>(d) satisfies the requirements of Chapter Six of the Constitution.</p> <p>(3) Board members appointed under 8(1) (a) and (f) shall not hold a public office.</p> |
| <p>Remuneration of the Board Members.</p> | <p>12. The members of the Board shall be paid such remuneration fees, allowances and disbursements for expenses as may be approved by the Cabinet Secretary and in consultation with the Salaries and Remuneration Commission.</p> |
| <p>Vacation of office.</p> | <p>13. The chairperson or a member of the Board may vacate office if he or she—</p> <p>(a) resigns from office, by notice in writing addressed to the—</p> <p>(i) President in the case of the Chairperson ;</p> <p>(ii) Cabinet Secretary in case of a member;</p> |

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| | <ul style="list-style-type: none"> (b) dies; (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months; (d) is removed from office in accordance with the provisions of section 14. |
| <p>Grounds of removal from office.</p> | <p>14. (1) The chairperson or member of the Board may be removed from office on any of the following grounds—</p> <ul style="list-style-type: none"> (a) in the case of the chairperson by the President, and in any other case of a member by the Cabinet Secretary; (b) has been absent from three consecutive meetings of the Board without notifying the chairperson; (c) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months; (d) is convicted of an offence involving dishonesty or fraud; (e) is adjudged bankrupt; (f) is incapacitated by physical or mental illness or is deemed otherwise unable to discharge his or her duties as a member of the Board; or (g) gross misconduct, misbehaviour or incompetence; or (h) fails to comply with the requirements of Chapter Six of the Constitution. |
| <p>Committees of the Board.</p> | <p>15. The Board may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act subject to the relevant Government guidelines.</p> |
| <p>Delegation of the Board.</p> | <p>16. The Board may by resolution either generally or in any particular case, delegate to any of its committees or to any of its members, officers or employees of the Corporation, the exercise of any of its powers or the performance of any of its functions under this Act or under any other written law.</p> |
| <p>Appointment of the Managing Director.</p> | <p>17. (1) There shall be a Managing Director of the Corporation who shall be appointed by the Cabinet Secretary, from a list of three qualified persons recommended by the Board following a competitive recruitment process.</p> <p>(2) In the exercise of his functions under this Act, the Managing Director shall, subject to the direction of the Board—</p> <ul style="list-style-type: none"> (a) be responsible for the day-to-day management of the Corporation; (b) manage the funds, property and affairs of the Corporation; |

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| | <p>(c) be responsible for the management of the staff of the Corporation;</p> <p>(d) recommend to the Board any alteration in salaries, wages or other terms and conditions of service of employees of the Corporation not involving expenditure in excess of the limits determined by the Board within its powers under paragraph (b) of section 9 (3) (d);</p> <p>(e) implement the policies, programs and objectives of the Corporation;</p> <p>(f) cause to be prepared for the approval of the Board—</p> <p>(i) the strategic plan and annual plan of the Corporation;</p> <p>(ii) the annual budget and audited accounts of the Corporation;</p> <p>(g) perform such other duties as may be assigned by the Board.</p> <p>(3) The Managing Director shall be appointed for a term of three years, renewable once.</p> <p>(4) Subject to this Act, the control and executive management of the Corporation shall be vested in the Managing Director.</p> |
| <p>Qualification for appointment of a Managing Director.</p> | <p>18. (1) A person shall be qualified for appointment as the Managing Director, if that person —</p> <p>(a) holds a Bachelor’s degree in the field of engineering, management, economics, business, law or finance from a university recognized in Kenya;</p> <p>(b) holds a Master’s degree from a university recognized in Kenya;</p> <p>(c) has over fifteen years’ experience, with at least five years relevant experience at senior management level in a public or private institution; and</p> <p>(d) satisfies the requirements of Chapter six of the Constitution.</p> |
| <p>Vacation of office</p> | <p>19. The Office of the Managing Director shall become vacant, if the holder—</p> <p>(a) dies;</p> <p>(b) by notice in writing addressed to the Chairperson of the Board resigns from office;</p> <p>(c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months without the option of a fine;</p> <p>(d) is removed from Office in accordance with the provisions of section 20.</p> |
| <p>Removal of the Managing Director from office.</p> | <p>20. (1) The Board may terminate the appointment of the Managing Director in accordance with terms and conditions of service for—</p> <p>(a) inability to perform the functions of the office arising out of physical or mental incapacity;</p> <p>(b) gross misconduct, misbehaviour or incompetence;</p> |

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| | <p>(c) adjudged bankrupt;</p> <p>(d) being charged with and convicted of an offence and sentenced to imprisonment for a term exceeding six months without the option of a fine;</p> <p>(e) neglect of duty; or</p> <p>(f) any other ground that would justify removal from Office under the terms and conditions of service.</p> <p>(2) Prior to removal from office under subsection (1), the Managing Director shall be—</p> <p>(a) informed, in writing, of the reasons for the intended removal; and</p> <p>(b) given an opportunity to put in a defence against any such allegations either in person or through a representative.</p> |
| <p>Appointment of Corporation Secretary.</p> | <p>21. The Board shall appoint a Corporation Secretary of the Corporation on such terms and conditions as the Board may determine and who shall perform duties as under section 22.</p> |
| <p>Duties of Corporation Secretary.</p> | <p>22. The Corporation Secretary shall:</p> <p>(a) provide guidance to the Board on their duties and responsibilities and on matters of governance;</p> <p>(b) provide guidance to the Board in its oversight role;</p> <p>(c) ensure compliance with statutory and regulatory requirements in the Corporation;</p> <p>(d) be the custodian of the seal of the Corporation and account to the Board for its use; and</p> <p>(e) perform any other duties as the Board may assign from time to time.</p> |
| <p>Staff of the Corporation.</p> | <p>23. (1) The Board may appoint such staff as may be necessary for its efficient working under such terms and conditions, including conditions relating to discipline and dismissal, as it may deem fit.</p> <p>(2) The Managing Director may with the approval of the Board appoint staff as are necessary for the proper and efficient discharge of the Corporation’s functions under this Act, and upon such terms and conditions of service as the Board may in consultation with Salaries and Remuneration Commission determine.</p> <p>(3) Every person who is employed in the undertaking of the Corporation and who becomes an employee of the Corporation under this Section shall be</p> |

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| | <p>deemed to have been appointed to the service of the Corporation in accordance with this section.</p> <p>(4) The Managing Director may, by notice in writing, authorize any staff appointed under this section to maintain order upon any premises occupied by the Corporation or in any port, train, vessel or vehicle of the Corporation.</p> |
| Common seal | <p>24. (1) The common seal of the Corporation shall be kept in the custody of the Corporation Secretary, and shall not be used except upon the order of the Board.</p> <p>(2) The common seal of the Corporation, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or certification by the Board under this section shall be presumed to have been duly given.</p> |
| Protection from Liability. | <p>25. (1) A member of the board, officer, agent or staff of the Corporation shall not be personally liable for any act or omission done or omitted in good faith in carrying out any of the functions of the Corporation under this Act.</p> <p>(2) The provisions of subsection (1) shall not relieve the Corporation of the liability to pay compensation or damages to any person for any injury caused by the exercise of any power conferred by this Act.</p> |
| Conduct of Business of the Board. | <p>26. The Board of the Corporation shall conduct their business in the manner set out in the Second Schedule to this Act.</p> |
| Delegation | <p>27. The Board of the Corporation and the Managing Director may delegate to any person any of the powers vested in them under this Act in writing either generally or particularly.</p> |
| Role and responsibility of the Cabinet Secretary | <p>28. The Cabinet Secretary shall have the powers to determine the policy framework within which the Corporation and Authority shall operate and for that purpose and with due regard to the need to uphold the Corporation and Authority, the Cabinet Secretary may –</p> <p>(1) give directions of a general nature to the Board relating to the operation of the undertaking of the Corporation and the Authority;</p> <p>(2) approve tariffs, rates, fares and other charges made for the services under the Corporation or the Authority;</p> |

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| | <p>(3) approve any individual capital work for the purposes of the Corporation whose estimated cost exceed prescribed limit set by the Cabinet Secretary for finance from time to time;</p> <p>(4) declare railways transport corridor of national and regional importance that can be developed and managed by the public or private infrastructure manager; and</p> <p>(5) give particular directions to the Board concerning any matter involving agreement with, or the interest of, any other country or territory.</p> |
| <p>Powers of Railway workers.</p> | <p>29. (1) Any Railway worker shall have the right to stop any person who intends to damage or destroy, or cause to move or shift, any railway signaling installation or other facilities for traffic operation, and any person who intends place obstacle(s) on the railway track.</p> <p>(2) The Railway worker may arrest the person referred to in subsection (1) and hand the person to the public security authorities.</p> <p>(3) Any Railway worker shall have the right to stop, order to disperse or use necessary means to disperse a person who has gathered up to intercept a train, or to assault a railway traffic control officer.</p> <p>(4) Any Railway worker shall have the right to stop those persons who try to start a riot and rob goods and materials being transported on railways and may seize them, detain and hand them over to the public security authorities.</p> <p>(5) Any Railway worker shall have the right to stop any person on board a train who causes public disorder or jeopardizes the physical being or property of other passengers; the railway security personnel may detain such person and hand them over to the public security authorities.</p> |
| <p>Acquisition of land for the purposes of the Corporation</p> | <p>30. (1) Where land is required by the Corporation for the purposes of the Corporation, it may either—</p> <p>(a) if such land is not public land, acquire such land through negotiation and agreement with the registered owner thereof in compliance with the existing land laws; or</p> <p>(b) if such land is public land, or if the Corporation is unable to acquire it by agreement in accordance with paragraph (a) of this subsection, notify the Cabinet Secretary responsible for public lands that the land specified in the notice is required for the purposes of the Corporation.</p> <p>(2) When notice has been given under subsection (1)(b), then—</p> |

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| | <p>(a) if the land is public land, the Cabinet Secretary responsible for Lands may, in his discretion and upon such terms and conditions as he may deem fit, place such land at the disposal of the Corporation for the purposes of the Corporation;</p> <p>(b) if the land is not public land, any provision in any written law which empowers the Cabinet Secretary responsible for Lands to acquire or direct the acquisition of such land for any specific purpose shall be deemed to include a power enabling the Cabinet Secretary responsible for lands to acquire or direct the acquisition of such land for the purposes of the Corporation.</p> <p>(3) Where any compensation is payable to any person in respect of any land specified in the notice given under subsection (1)(b) acquired by the Cabinet Secretary responsible for lands, and such land after being so acquired is placed at the disposal of the Corporation in accordance with subsection (2)(a), the amount of the compensation payable to that person, in accordance with the provisions of the law under which the land was acquired, shall be paid by the Corporation.</p> <p>(4) The Corporation may at any time convey, transfer or surrender any land surplus to both its existing and future requirements by a conveyance or a deed of surrender either for, or without, consideration: Provided that land which was public land or trust land shall be surrendered to the Government and shall not be conveyed or transferred to any other person unless the Cabinet Secretary responsible for lands shall consent and so direct.</p> <p>(5) The provisions of subsection (4) shall apply to land vested in the Corporation by any written law, including this Act, as well as to land conveyed to it or otherwise placed at its disposal.</p> <p>(6) In this section “public land” has the meaning assigned to it under Article 62 of the Kenyan Constitution, 2010.</p> |
| Power to enter land to survey etc. | <p>31. (1) Any authorized employee of the Corporation may, subject to the existing laws, for the purposes of the Corporation, enter upon—</p> <p>(a) any land and survey such land or any portion thereof;</p> <p>(b) any land contiguous to any land occupied by the Corporation and—</p> <p>(i) excavate, take away and use any earth, stone, gravel or similar materials out of such land;</p> <p>(ii) cut, take away and use any timber on such land.</p> |

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| | <p>(2) Where any materials or timber are taken away in, or any damage is caused by reason of, the exercise of the powers conferred by this section, the owner or occupier of the land shall be entitled to compensation therefor in accordance with this Act.</p> |
| <p>Power to enter land to prevent accident.</p> | <p>32. (1) An Operator, infrastructure manager or any authorized employee, may, for the purpose of preventing the occurrence of any accident, preserving the safe operation of any transport services provided by the operator or infrastructure manager or repairing any damage caused by any accident, enter upon any land and—</p> <p>(a) cut down or remove any tree or other obstruction not being a building, which obscures the view of any fixed signal or beacon or which is likely to cause any obstruction or danger to any such transport service; and</p> <p>(b) execute such other works as may be necessary to prevent the occurrence of any accident or to repair any damage caused as a result of any accident.</p> <p>(2) If any tree or other obstruction cut down or removed under subsection (1) (a) came into existence subsequent to the transport services being provided at that place then no compensation shall be payable in respect of such entry or the cutting down or removal of such tree or other obstruction.</p> <p>(3) Where any person erects any building which obscures the view of a fixed signal or is likely to cause any obstruction or any danger to any rail or transport service, the Operator, Infrastructure Manager may, unless such person has previously obtained the approval of the Authority to erect such building or has modified it to the satisfaction of the Authority, apply to a judge of the High Court for an order for the demolition or modification of the building or, as the case may require, for the payment to the Operator or the Infrastructure Manager of the cost incurred in resisting or replacing any signaling or other equipment which is necessary to prevent such obstruction or danger and the court, at its discretion, may grant such order and may make such order as to the payment of compensation and costs as it deems fit.</p> |
| <p>Power to enter land to alter position of pipes, etc.</p> | <p>33. (1) Subject to this section and other existing laws, an Operator, Infrastructure Manager or any authorized employee may, for the purposes of its operation, enter upon any land and alter the position of any pipe for the supply of gas, oil, water or compressed air or the position of any electric telephone or telegraphic wire, fibre optic or the position of any drain.</p> |

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| | <p>(2) Where the Operator or Infrastructure Manager exercise any power under subsection (1), it shall give reasonable notice of its intention so to do to the agency or person having control of the pipe, wire or drain and-</p> <p>(a) the agency or person may authorize a representative to superintend such work and may require the operator to execute such work to the satisfaction of such representative;</p> <p>(b) An Operator or Infrastructure Manager shall make arrangements for the maintenance of the supply of gas, oil, water, compressed air or electricity, for the continuance of the telephone or communications or for the maintenance of the drainage, as the case may be, during the execution of such work.</p> <p>(3) Where any damage is caused by reason of the exercise of the powers conferred by this section, the person suffering such damage shall be entitled to compensation therefor in accordance with this Act.</p> <p>(4) This section shall not apply to any oil pipeline owned or operated by the Kenya Pipeline Company Limited.</p> |
| <p>Power to take water.</p> | <p>34. Subject to other existing laws, the Corporation may, for its purposes, take any water from any natural watercourse.</p> |
| <p>Conduct of Prosecution.</p> | <p>35. The Corporation after investigation may recommend to the Office of the Director of Public Prosecution any prosecution for any offence under this Act.</p> |
| <p>Notice of claim</p> | <p>36. (1) No person shall be entitled to compensation for non-delivery of the whole of a consignment of goods, or of any separate package forming part of such consignment, accepted by the Corporation for carriage or warehousing unless a claim in writing, giving such particulars as may reasonably be necessary, is given to the Managing Director within six months of the date upon which such goods were accepted by the Corporation.</p> <p>(2) No person shall be entitled to compensation for any goods missing from a packed or unpacked consignment of, or for mis-delivery of, damage or delay to, detention of or deviation in the carriage of any goods accepted by the Corporation for carriage or warehousing unless—</p> <p>(a) the Managing Director is notified of such fact in writing within four days of the date upon which such goods were delivered, or offered by the Corporation for delivery to the consignee or person entitled to take delivery thereof; and</p> |

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| | <p>(b) a claim in writing, giving such particulars as may reasonably be necessary, is given to the Managing Director within one month of such date.</p> <p>(3) Where the person claiming compensation proves that it was impracticable for him to notify the managing director or give the managing director his claim as set out in subsections (1) and (2) within the time specified therein, and that such notification or claim was made or given in reasonable time, nothing in those subsections shall prejudice the right of such person to obtain compensation.</p> |
| <p>Limitation of liability</p> <p>Cap. 22</p> | <p>37. Where any action or other legal proceeding is commenced against the Corporation for any act done in pursuance or execution, or intended execution, of this Act or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or of any such duty or authority, the following provisions shall have effect—</p> <p>(a) the action or legal proceeding shall not be commenced against the Corporation until at least one month after written notice containing the particulars of the claim, and of intention to commence the action or legal proceeding, has been served upon the Managing Director by the plaintiff or his agent; and</p> <p>(b) the action or legal proceeding commenced against the Corporation under this Act shall be subject to Limitation of Actions Act and relevant laws.</p> |
| <p>Restriction on execution against the property of the Corporation</p> | <p>38. Notwithstanding anything to the contrary in any law—</p> <p>(a) where any judgment or order has been obtained against the Corporation, no execution or attachment, or process in the nature thereof, shall be issued against the Corporation or against any immovable property of the Corporation or any of its trains, vehicles, vessels or its other operating equipment, machinery, fixtures, fittings or any other property listed under the asset register maintained by the Corporation; but the Managing Director shall, without delay, cause to be paid out of the revenue of the Corporation such amounts as may, by the judgment or order, be awarded against the Corporation to the person entitled thereto;</p> <p>(b) no immovable property of the Corporation or any of its trains, vehicles, vessels or its other operating equipment, machinery, fixtures, fittings or any other property listed under the asset register maintained by the Corporation shall be seized or taken by any person having by law power to attach or distrain property without the previous written permission of the Managing Director.</p> |

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| <p>Service of notice, etc., by the Managing Director.</p> | <p>39. Any notice or other document required or authorized under this Act to be served on any person by the Corporation or the Managing Director or any employee may be served—</p> <ul style="list-style-type: none"> (a) by delivering it to that person; (b) by leaving it at the usual or last known place of abode of that person; or (c) by sending it by post addressed to that person at his usual or last known address. |
| <p>National Police Service</p> | <p>40. The Inspector General of Police shall support the Corporation in the safeguarding of the railway infrastructure including infrastructure, moving of trains, inquiring into railway accidents, and escort duties on the Kenya Railways network.</p> |
| <p>Funds of the Corporation</p> <p>Cap472</p> <p>Cap. 469C</p> | <p>41. The funds and assets of the Corporation shall consist of—</p> <ul style="list-style-type: none"> (a) such money as may be appropriated by the National Assembly for the purposes of the Corporation; (b) monies from the Railway Development Levy Fund established under the Excise Duty Act and Miscellaneous Fees and Levies Act or any other applicable law; (c) any monies or property which may in any manner accrue or vest in the Corporation in the course of the exercise of its functions under this Act; (d) such money as may become payable to the Corporation by way of fares, charges, rent or fees; (e) infrastructure access charges paid to the Corporation by the train operators; (f) all monies from any other sources provided, donated or lent to the Corporation; and (g) such gifts as may be donated to the Corporation. |
| <p>Receipts, earnings and accruals for the Corporation</p> | <p>42. The receipts, earnings or accruals of the Corporation and the balances at the end of each financial year shall be retained for the purposes for which the Corporation is established.</p> |
| <p>Investment of funds of the Corporation</p> | <p>43. Subject to the written approval of the Cabinet Secretary responsible for finance, the Corporation may invest any part of its funds in such a manner as it may consider appropriate.</p> |
| <p>Principles of operation of the Corporation.</p> | <p>44. (1) It shall be the duty of the Corporation to conduct its business according to commercial principles and to perform its functions in such a manner as to secure</p> |

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| | <p>that, taking one year with another, its gross revenue is not less than sufficient to meet its outgoings which are properly chargeable to revenue account including proper allocations to the general reserve and provisions in respect of depreciation of capital assets, pension liabilities, and interest and other provision for the repayments of loans, and further to ensure that, taking one year with another, its net operating income is not less than sufficient to secure an annual return on the value of the net fixed assets in operation by the Corporation of such a percentage as the Cabinet Secretary may direct from time to time.</p> <p>(2) For the purposes of subsection (1)—</p> <p>(a) “net operating income” shall be determined by subtracting from gross operating revenue all operating and administrative expenses including adequate provision for maintenance and depreciation but excluding interest and other charges on debt;</p> <p>(b) “value of the net fixed assets in operation” shall be the gross value of those assets less the amount of accumulated depreciation shown in the statement of accounts of the Corporation:</p> <p>Provided that, if the amounts shown in the statements of accounts do not reflect a true measure of the value of the assets concerned because of currency revaluations, changes in prices or similar factors, the value of the fixed assets shall be adjusted adequately to reflect such currency revaluations, changes in prices or similar factors.</p> <p>(3) In the exercise of its duty under subsection (1), the Corporation may, subject to any directions of a general nature which may be given to the Board by the Cabinet Secretary responsible for finance, invest moneys standing to the credit of the Corporation in such securities as the Board thinks fit.</p> <p>(4) Notwithstanding the provisions of this Act and so far as is not inconsistent with the provisions of this section or with the principles of prudent finance, the Cabinet Secretary may, from time to time, in consultation with the Board, make provision for cheap transport to be provided by the Corporation to assist agriculture, mining and industrial development in Kenya.</p> |
| Borrowing powers. Cap 412A | <p>45. (1) The Corporation may borrow money required for the exercise of its functions and for undertaking its obligations after approval by the Cabinet Secretary responsible</p> |

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| | <p>for finance in accordance with the provisions of the Public Finance Management Act.</p> <p>(2) The Corporation may borrow money by the issue of loan stock on such terms as may be approved by the Cabinet Secretary responsible for finance.</p> <p>(3) The Corporation may otherwise borrow money or obtain credit in Kenya or abroad for the purposes of the Corporation with the concurrence of, and subject to such limitations as may be imposed by, the Cabinet Secretary responsible for finance.</p> <p>(4) Such stock issued under the provisions of subsection (1) and such moneys borrowed or credit obtained under the provisions of subsection (2) as the Cabinet Secretary responsible for finance shall approve for the purposes of this subsection, and all interest and other charges payable in respect of such stock, moneys or credit, shall, unless the instrument or note evidencing or supporting such borrowing shall otherwise provide, be charged upon all the property, undertakings and revenue of the Corporation by operation of this section and without further charge or instrument.</p> <p>(5) Except as provided in this section, the Corporation shall not give or execute any mortgage or charge over any of its property or assign its property by way of security for borrowed money.</p> |
| <p>Annual estimates of the Corporation</p> <p>Cap 412A</p> | <p>46. (1) Before the commencement of each financial year, the Board of the Corporation shall cause to be prepared estimates of the revenue and expenditure of the Corporation for that year in accordance with the Public Finance Management Act.</p> <p>(2) The annual estimates shall make provision for all the estimated expenditure of the Corporation for the financial year concerned and in particular shall provide for—</p> <ul style="list-style-type: none"> (a) the payment of salaries, allowances and other charges in respect of the staff of the Corporation; (b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the finances of the Corporation; (c) the acquisition, maintenance, repair and replacement of the equipment and other movable property of the Corporation; and (d) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance and the replacement of buildings or equipment, or in respect of such other matters as the Board of the Corporation may deem fit. |

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| | <p>(3) The annual estimates shall be prepared by the Board of the Corporation before commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary.</p> <p>(4) No expenditure shall be incurred for the purposes of the Corporation except in accordance with the annual estimates approved under subsection (3) or with prior written approval.</p> |
| Financial year. | <p>47. The financial year of the Corporation shall be the period of twelve months commencing on the 1st of July in every year and ending on the 30th of June in the next succeeding year.</p> |
| Accounts and audit of the Corporation. Cap 446 Cap 412A | <p>48. The Board of the Corporation shall ensure that proper books of accounts of the income, expenditure, assets and liabilities of the Corporation and its subsidiaries are kept, and that consolidated accounts or financial statements are prepared and shall in this regard be subject to the provisions of the State Corporations Act and the Public Finance Management Act or any other relevant laws.</p> |
| Annual reports of the Corporation Cap 412B | <p>49. (1) The Corporation shall within three months after the end of each financial year prepare and shall submit to the Cabinet Secretary an annual report relating to the operation of the Corporation for the immediate preceding year.</p> <p>(2) The Accounts of the Corporation shall be audited and reported in accordance with the Public Audit Act.</p> |
| Railway investment program. Cap. 412A | <p>50. (1) Subject to the provisions of the Public Finance Management Act, the Cabinet Secretary shall, once every five years, in consultation with the Board of the Corporation, cause to be prepared a railway investment program for approval by the Cabinet Secretary responsible for finance.</p> <p>(2) The railway investment program prepared under subsection (1) shall outline development and maintenance priorities costed with respect to stated sections of the railway, and also aggregated by such other detail as may be specified.</p> |
| Establishment of the Railway Training Institute. | <p>51. (1) The Corporation may establish a Railway Training Institute.</p> <p>(2) The Institute shall provide learning and development programmes which include training and research in the railway sector and shall—</p> |

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| | <p>(a) undertake and offer rail safety training;</p> <p>(b) undertake and offer maritime training;</p> <p>(c) award certificates of courses undertaken in the institute;</p> <p>(d) offer consultancy in the railway, transport and logistics industry;</p> <p>(e) undertake technical and vocational training;</p> <p>(f) enter into association with other institutions of learning, within or outside Kenya, as the Institute may consider necessary or appropriate and in furtherance of railway, transport and logistics research and training;</p> <p>(g) organize symposia, conferences, workshops and other meetings to promote the exchange of knowledge on matters relating to railway research and training;</p> <p>(h) in consultation with the Board of the Corporation develop the curriculum in the railway, transport and logistics sector; and</p> <p>(i) perform any other functions that are ancillary to the object and purpose for which the Institute is established.</p> <p>(3) In performing the functions in subsection (1) the Institute shall—</p> <p>(a) promote equity and access to research and training in the railway, transport and logistics industry; and</p> <p>(b) promote use of technology and innovation in training in the railway, transport and logistics industry.</p> <p>(4) The Institute shall be headed by an officer appointed by the Corporation upon such terms and conditions as it may determine.</p> |
| | <p>PART III – RAILWAY REGULATION</p> <p>Chapter 1 – Establishment of The Railway Regulatory Authority</p> |
| <p>Establishment of the Railway Regulatory Authority</p> | <p>52. (1) There is established an Authority to be known as the Railway Regulatory Authority.</p> |

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| | <p>(2) The Authority is a body corporate with perpetual succession, and a common seal and shall in its corporate name, be capable of—</p> <ul style="list-style-type: none">(a) suing and being sued;(b) taking, purchasing and disposing of movable and immovable property;(c) raising revenue and borrowing money; and <p>(3) entering into contracts; and</p> <p>(4) doing or performing such other things or acts for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.</p> |
| Functions of Railways Regulatory Authority | <p>53. (1)The Authority shall:</p> <ul style="list-style-type: none">(a) advise and make recommendations to the Cabinet Secretary on matters relating to railway technical and safety regulation;(b) advise and make recommendations to the Cabinet Secretary on economic regulation, including tariffs for railway services;(c) register and license train operators and infrastructure managers;(d) promote investment in rail equipment, infrastructure and service;(e) implement policies relating to railway safety, security and economic regulation;(f) ensure the provision of safe, reliable and efficient rail transport services;(g) conduct inspections and certification on rolling stock, communication and signaling systems;(h) appoint inspectors;(i) advise the Cabinet Secretary on national policy with regard to the rail transport safety and economic regulation;(j) develop and implement rail operations safety strategies;(k) facilitate the education of the members of the public on rail operations safety;(l) conduct research on rail transport; |

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| | <p>(m) conduct audits on rail safety;</p> <p>(n) establish and maintain a database on rail accidents and incidents;</p> <p>(o) establish systems and procedures for, and oversee the training, testing and licensing of train drivers and safety critical railway workers;</p> <p>(p) approve the curricula for train drivers and safety critical railway workers;</p> <p>(q) license and approve railway training programmes;</p> <p>(r) implement, co-ordinate and supervise the activities related to rail safety;</p> <p>(s) develop Technical Standards and Specifications for construction, operation and maintenance of railways;</p> <p>(t) prepare, review and update Technical Specifications for inter-operability taking into account developments in technology, safety, social or environmental requirements; and</p> <p>(u) perform such other functions as may be conferred on it by the Cabinet Secretary or by any other written law.</p> |
| Management of the Authority | <p>54. (1) The management of the Authority shall vest in a Board which shall consist of: -</p> <p>(a) a Chairperson, appointed by the President;</p> <p>(b) the Cabinet Secretary responsible for finance;</p> <p>(c) the Principal Secretary responsible for matters relating to rail transport;</p> <p>(d) the Attorney General;</p> <p>(e) Six persons, not being public officers or employees of the Authority and appointed by the Cabinet Secretary by virtue of their knowledge of and experience in railways sector or transport; and</p> <p>(f) the Director-General.</p> <p>(2) The persons appointed under subsection (1) (b), (c) and (d) may designate, in writing, a person to represent them in any meeting of the Board.</p> <p>(3) The Chairperson and members appointed under subsection (1) (e) shall be appointed by name and by notice in the Gazette.</p> |

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| | <p>(4) The chairperson and members of the Board shall be appointed with due regard to regional and gender balance, representation from youth or persons living with disabilities.</p> <p>(5) The Board may co-opt any person from the Government or any state agency as may be required from time to time depending on the subject matter.</p> |
| Remuneration of Board Members | 55. The members of the Board shall be paid such remuneration fees, allowances and disbursements for expenses as may be approved by the Cabinet Secretary responsible for railways and in consultation with the Salaries and Remuneration Commission. |
| Qualifications of the Chairperson | 56. (1) A person shall be qualified to be appointed as the Chairperson, if the person— <ul style="list-style-type: none"> (a) is a Kenyan citizen; (b) holds a degree in the field of education, engineering, management, economics, business or public administration, law or finance or any other fields relevant to the functions of the Authority from a university recognized in Kenya; (c) has at least fifteen years’ experience in the public service or as a practitioner in a relevant profession or industry; (d) satisfies the requirements of Chapter Six of the Constitution. |
| Term of Office of Chairperson and members | 57. The Chairperson and the appointed members of the Board shall serve for a term of three years and shall be eligible for the reappointment for a further one term of three years. |
| Vacation of office of the Chairperson and Members | 58. The Office of the Chairperson and a member of the Board shall become vacant if the holder— <ul style="list-style-type: none"> (a) dies; (b) resigns from office by notice in writing to the appointing authority; (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months; and (d) is removed from office in accordance with the provisions of section 59. |
| Removal of the Chairperson and Members. | 59. The Chairperson or member of the Board of the Authority may be removed from office by the appointing authority if that person— <ul style="list-style-type: none"> (a) is absent from three consecutive meetings of the Board without notice; |

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| | <ul style="list-style-type: none">(b) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;(c) is convicted of an offence involving dishonesty or fraud;(d) is adjudged bankrupt;(e) is incapacitated by physical or mental illness or is deemed otherwise unfit to discharge his or her duties as a member of the Board;(f) neglect of duty; or(g) gross misconduct or misbehavior. |
| Director General of the Authority. | <p>60. (1) There shall be a Director General of the Authority who shall be appointed by the Cabinet Secretary, from a list of three qualified persons recommended by the Board following a competitive recruitment process on such terms as the Board may, on the advice of the Salaries and Remuneration Commission, determine.</p> <p>(2) In the exercise of his or her functions under this Act, the Director General shall, subject to the direction of the Board of the Authority —</p> <ul style="list-style-type: none">(a) be responsible for the day-to-day management of the Authority;(b) manage the funds, property and affairs of the Authority;(c) be responsible for the management of the staff of the Authority;(d) implement the policies, programs and objectives of the Authority;(e) cause to be prepared for the approval of the Board of the Authority;<ul style="list-style-type: none">(i) the strategic plan and annual plan of the Authority; and(ii) the annual budget and audited accounts of the Authority; and(f) perform such other duties as may be assigned by the Board of the Authority. <p>(4) A person shall be qualified for appointment as the Director General, if that person—</p> <ul style="list-style-type: none">(a) holds a Bachelor’s degree in engineering, management, economics, business, law, finance from a university recognized in Kenya;(b) holds a Master’s degree from a university recognized in Kenya; |

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| | <p>(c) has fifteen years' experience with at least five years' relevant experience at senior management level in a public or private institution; and</p> <p>(d) meets the requirements of Chapter six of the Constitution.</p> <p>(5) The Director General shall be appointed for a term of three years and shall be eligible for reappointment for one further term of three years.</p> |
| Ground for removal | <p>61. The Board of the Authority may recommend the removal of the Director General from office for—</p> <p>(a) inability to perform the functions of the office arising out of physical or mental incapacity;</p> <p>(b) gross misconduct or misbehaviour;</p> <p>(c) incompetence or neglect of duty; or</p> <p>(d) any other ground that would justify removal from office under the terms and conditions of service.</p> |
| Appointment of Corporation Secretary of the Authority | <p>62. There shall be a Corporation Secretary of the Authority who shall be competitively recruited and appointed by the Board of the Authority on such terms as the Board may, on the advice of the Salaries and Remuneration Commission, determine.</p> |
| Role of Corporation Secretary of the Authority | <p>63. (1) The Corporation Secretary shall be the Secretary to the Board and shall—</p> <p>(a) provide guidance to the Board on their duties and responsibilities and on matters of governance;</p> <p>(b) provide guidance to the Board in its oversight role;</p> <p>(c) ensure compliance with statutory and regulatory requirements in the Corporation;</p> <p>(d) be the custodian of the seal of the Corporation and account to the Board for its use; and</p> <p>(e) any other duties as the Board may assign from time to time..</p> |
| Staff of the Authority | <p>64. (1) The Director General with the approval of the Board of the Authority shall appoint such officers and other staff as are necessary for the proper and efficient discharge of its functions under this Act, and upon such terms and conditions of</p> |

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| | <p>service as the board of the Authority, may in consultation with Salaries and Remuneration Commission determine.</p> <p>(2) The Authority may engage consultants and experts as it considers appropriate to assist it to perform its functions and exercise its powers.</p> |
| Committees of the Board of the Authority | 65. The Board of the Authority may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act. |
| Delegation of Powers. | 66. The Board of the Authority may in a particular case, delegate to any of its committees or to any of its members, officers or employees, the exercise of any of its powers or the performance of any of its functions under this Act or under any other written law. |
| Conduct of meetings. | 67. The conduct of the meetings of the Board of the Authority shall be in accordance with the Second Schedule. |
| Funds of the Authority. | <p>68. (1) The funds of the Authority shall consist of –</p> <p style="padding-left: 40px;">(a) monies appropriated by Parliament for the purposes of the Authority;</p> <p style="padding-left: 40px;">(b) monies that may be payable to the Authority pursuant to this Act or any other written law; and</p> <p style="padding-left: 40px;">(c) donations, gifts and grants made to the Authority.</p> <p>(2) There shall be paid out of the funds of the Authority any expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.</p> |
| Financial year. | 69. The financial year of the Authority shall be the period of twelve calendar months commencing on the 1 st of July in every year and ending on the 30 th of June in the next succeeding year. |
| Annual estimates of the Authority. Cap 412A | <p>70. (1) Before the commencement of each financial year, the Board of the Authority shall cause to be prepared estimates of the revenue and expenditure of the Authority for that financial year in accordance with the Public Finance Management Act.</p> <p>(2) The annual estimates shall make provision for all the estimated expenditure of the Authority for the financial year concerned and in particular shall provide for—</p> |

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| | <p>(a) the payment of salaries, allowances and other charges in respect of the staff of the Authority;</p> <p>(b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the finances of the Authority;</p> <p>(c) the acquisition, maintenance, repair and replacement of the equipment and other movable property of the Authority; and</p> <p>(d) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance and the replacement of buildings or equipment, or in respect of such other matters as the Board of the Authority may deem fit.</p> <p>(3) The annual estimates shall be prepared by the Board of the Authority before commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary.</p> <p>(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3) or with prior written approval.</p> |
| <p>Accounts and audit.</p> | <p>71. The Board of the Authority shall ensure that proper books of accounts of the income, expenditure, assets and liabilities are kept, and shall in this regard be subject to the provisions of the relevant laws.</p> |
| <p>Annual reports of the Authority. Cap 412B</p> | <p>72. (1) The Authority shall within three months after the end of each financial year prepare and shall submit to the Cabinet Secretary and annual report relating to the operation of the Authority for the immediate preceding year.</p> <p>(2) The Accounts of the Authority shall be audited and reported in accordance with the Public Audit Act.</p> |
| <p>Chapter II —Licensing of Train Operators within the Kenya Railway Network</p> | |
| <p>Prohibition.</p> | <p>73. (1) A person shall not operate rolling stock on the Kenya Railway network without a railway operating license granted by the Authority in accordance with this Act.</p> <p>(2) A holder of a railway operating license shall not access the Kenya Railway network without a license from the Corporation for train path as provided under section 87.</p> |

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| | <p>(3) The Corporation shall not carry out the functions of an infrastructure manager without a license from the Authority.</p> <p>(4) A person who contravenes the provisions of this section commits an offence and shall be liable, on conviction to a fine not exceeding hundred million shillings.</p> |
| Classes of licenses. | <p>74. The Authority may issue the following classes of railway operating licenses to a person wishing to operate rolling stock on the Kenya Railway network—</p> <ul style="list-style-type: none"> (a) a long-distance passenger service license issued for the carriage of passengers on long-haul or intercity journeys; (b) a commuter line service license issued for the carriage of passengers in urban or sub-urban areas; (c) a freight service license issued for the carriage of goods; (d) an infrastructure management license issued to Corporation for the purpose of managing the Kenya Railway network and for assisting the train operator under paragraphs (a), (b) or (c) in cases of emergency; or (e) a license combining any or all of the above classes of licenses issued under paragraphs (a), (b) or (c). |
| Application for a license. | <p>75. (1) An application to the Authority for a railway operating license, shall be in the manner prescribed.</p> <p>(2) An application for a license under subsection (1), shall—</p> <ul style="list-style-type: none"> (a) specify the scope of services to be rendered under the license applied for; (b) be accompanied by a comprehensive environmental impact assessment study and an Environmental Management Plan in accordance with the Environmental Management and Co-ordination Act or other existing laws in relation to the proposed service; (c) state the jurisdictional area of operation; (d) provide proof of adequate liability insurance coverage in relation to the proposed service which satisfies the prescribed liability insurance coverage requirements; |

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| | <p>(e) provide proof of the applicant’s ability to satisfy the prescribed financial requirements;</p> <p>(f) provide an integrated safety management plan which includes a safety management systems that are capable of averting damage during operations;</p> <p>(g) provide proof that the organizational structure and the requisite professional competence and skills of the applicant satisfies the safety requirements; and</p> <p>(h) any other additional information as the Authority may consider necessary or as may be prescribed.</p> |
| Eligibility criteria for a railway operating license. | <p>76. (1) A person shall be eligible for the grant of a railway operating license, if such person—</p> <p>(a) is a body corporate;</p> <p>(b) is not insolvent;</p> <p>(c) has been in railway operation for a period of not less than five years in a similar system; and</p> <p>(d) has the necessary technical and financial capability to put in place an operation and safety management system that guarantees safe railway operations.</p> |
| Issuance of licenses. | <p>77. (1) The Authority may grant or decline to grant an application for a railway operating licence.</p> <p>(2) In exercising its discretion under subsection (1), the Authority shall have regard—</p> <p>(a) to the public interest, including the interest of persons requiring and those of persons providing facilities for transport;</p> <p>(b) on whether there is sufficient capacity on the Kenya Railway network; and</p> <p>(c) to such other matters as may be prescribed by regulations.</p> |

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| | <p>(3) Where the Authority has declined to grant a licence it shall within the prescribed period notify the applicant with written reasons for its decision.</p> <p>(4) A railway operating license shall contain such conditions that the Authority considers appropriate</p> <p>(5) Any matter affecting licences to operate a network, operate trains or stations will be adjudicated upon by the Authority.</p> <p>(6) The Authority shall publish the names of every license holder and the conditions of the licence.</p> |
| Variation of Conditions of a licence. | <p>78. (1). The Authority may, from time to time, either on its own motion or on the application of a train operator, cancel or vary, any condition of the railway operating licence in accordance with the provisions of this Act.</p> <p>(2) A train operator who fails to comply with any condition contained in its railway operating licence commits an offence and shall be liable, on conviction, to a fine not exceeding three million shillings or to imprisonment for a term not exceeding three year or to both.</p> |
| Duration of a license. | <p>79. A railway operating license shall, unless previously revoked, remain in force for five years from the date of issue.</p> |
| Renewal of a license. | <p>80. (1) An applicant shall apply for a renewal of railway operating license as prescribed in section 75 at least six months before the expiry of the license.</p> <p>(2) If on the date of the expiration of a railway operating license, proceedings are pending before the Authority on an application for the grant of a new railway operating license, the existing railway operating license shall continue in force until such application is determined.</p> |
| Transferability of a railway operating license. | <p>81. A railway operating license shall not be transferable.</p> |

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| <p>Power of the Authority to revoke or suspend licences.</p> | <p>82. (1) The Authority may in accordance with this Act, suspend or revoke a railway operating licence, where the train operator—</p> <p>(a) is in breach of the provisions of this Act or regulations made there under; or</p> <p>(b) fails to comply with a condition for the issuance of the railway operating licence.</p> <p>(2) The Authority shall, where it revokes or suspends a railway operating licence, inform the train operator immediately in writing of the reasons for such revocation or suspension and inform the infrastructure manager of the revocation or suspension.</p> <p>(3) A person aggrieved by the decision of the Authority under this section shall appeal to the Railways Appeals Board.</p> |
| <p>False Statements.</p> | <p>83. A person who, knowingly omits, misleads or makes any false statement, for the purpose of—</p> <p>(a) obtaining a railway operating licence;</p> <p>(b) obtaining a variation of a railway operating licence;</p> <p>(c) preventing the grant or variation of any railway operating licence; or</p> <p>(d) procuring the importation of any condition or limitation in relation to a railway operating licence;</p> <p>commits an offence and shall be liable, on conviction to a fine not exceeding one hundred million.</p> |
| | <p>Chapter III — Access To Railway Line by Train Operators</p> |
| <p>Network statement.</p> | <p>84. (1) The Infrastructure Manager shall prepare and publish a network statement for its railway network one hundred and twenty days before the end of the calendar year.</p> <p>(2) The network statement shall contain a section—</p> <p>(a) setting out the characteristics of the infrastructure, excess infrastructure capacity and the conditions of access to it;</p> |

- (b) setting out in detail the general rules, timelines, procedures and criteria for charging and infrastructure capacity allocation schemes, including information required to enable applications for infrastructure capacity;
 - (c) on charging principles and tariffs, which shall contain appropriate details of the charging scheme as well as sufficient information on charges that apply to the services listed in the First Schedule and which shall detail the methodology, rules and, where applicable, scales used for the application of section 123(3), 124 and sections 125;
 - (d) setting out the general capacity characteristics of the infrastructure on the principles and criteria for capacity allocation, which is available to train operators and any restrictions relating to its use, including likely capacity requirements for maintenance;
 - (e) specifying the procedures and deadlines which relate to the capacity allocation process and specific criteria which are employed during that process, in particular—
 - (i) the procedures according to which a train operator may request capacity from the Infrastructure Manager;
 - (ii) the requirements governing a train operator;
 - (iii) the schedule for the application and allocation processes;
 - (iv) the principles governing the coordination process
 - (v) the procedures which shall be followed and criteria used where infrastructure is congested;
 - (vi) details of restrictions on the use of infrastructure; and
 - (vii) any conditions by which account is taken of previous levels of use of capacity in determining priorities for the allocation process.
- (3) The network statement shall detail the measures taken to ensure the adequate treatment of freight services, passenger services and ad hoc requests in accordance with section 92.

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| <p>Applications for infrastructure capacity.</p> | <p>85. (1) A train operator may apply to the Infrastructure Manager for infrastructure capacity.</p> <p>(2) The Corporation shall set requirements with regard to infrastructure capacity allocation to ensure that the Corporation's legitimate expectations about future revenues and use of the infrastructure are safeguarded, provided that such requirements shall—</p> <ul style="list-style-type: none">(a) be appropriate, transparent and non-discriminatory; and(b) be published as part of the allocation principles in the network statement. <p>(3) The requirements in subsection (2) shall include—</p> <ul style="list-style-type: none">(a) the provision of a financial guarantee that must not exceed an appropriate level which shall be proportional to the contemplated level of activity of the applicant;(b) assurance of the capability to prepare compliant bids for infrastructure capacity; and(c) any other requirement that the board of the Corporation may prescribe. <p>(5) The Corporation may within fourteen days seek clarification of any matter regarding the application.</p> <p>(6) The Application shall within 7 days respond on the clarification made by the Corporation.</p> <p>(7) Subject to subsection 6 approve or reject an application by a train operator under subsection (1) and where the Corporation rejects, the Corporation shall state reasons for refusal.</p> <p>(5) Where the Corporation has approved an application by a train operator, the Corporation shall issue an access certificate.</p> |
| <p>Capacity rights.</p> | <p>86. (1) The Corporation shall allocate infrastructure capacity to a train operator and shall not be transferrable.</p> |

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| | <p>(2) The Corporation shall allocate excess infrastructure capacity on a transparent, fair and non-discriminatory basis.</p> <p>(3) The right to use specific infrastructure capacity in the form of a train path may be granted to train operators for a maximum duration of one working timetable period.</p> <p>(4) The Corporation may enter into a framework agreement, as provided under section 87 for the use of capacity on the relevant railway infrastructure for a longer term than one working timetable period.</p> |
| <p>Framework agreements.</p> | <p>87. (1) Subject to the approval of the Authority, a framework agreement may be concluded between the Corporation and a train operator.</p> <p>(2) The framework agreement shall specify the characteristics of the infrastructure capacity required by and offered to the train operator over a period of time exceeding one working timetable period.</p> <p>(3) No framework agreement shall be such as to preclude the use of the relevant infrastructure by other train operators.</p> <p>(4) A framework agreement—</p> <p>(a) shall allow for the amendment or limitation of its terms to enable better use to be made of the railway infrastructure; and</p> <p>(b) shall be for a period not more than five years, subject to application under section 85 (1).</p> <p>(6) At the expiry of a Framework Agreement a train operator who is already a party to a framework agreement shall apply for renewal in accordance with the Act.</p> <p>(7) No Framework Agreement shall preclude the use of the relevant infrastructure by other train operators.</p> <p>(8) A framework agreement shall not be transferable.</p> |
| <p>Schedule for the allocation process.</p> | <p>88. The Corporation shall adhere to the following infrastructure capacity allocation schedule—</p> <p>(a) the working timetable shall be prepared once per calendar year;</p> |

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| | <p>(b) the final date for receipt of requests for capacity to be incorporated into the working timetable shall be no more than ninety days in advance of the entry into force of the working timetable; and</p> <p>(c) not later than ninety days after the deadline for submission of requests by train operators, the Corporation shall prepare a working timetable.</p> |
| Scheduling. | <p>89. (1) The Corporation shall as far as possible –</p> <p>(a) meet all requests for infrastructure capacity; and</p> <p>(b) take account of all constraints on train operators, including the economic effect on their business.</p> <p>(2) The Corporation may give priority to specific services within the scheduling and coordination process but only as set out in section 88.</p> <p>(3) The Corporation shall consult interested parties about the draft working timetable and allow them at least thirty days to present their views.</p> <p>(4) For the purpose of subsection (3), “interested parties” shall include all those who have requested infrastructure capacity who wish to have the opportunity to comment on how the working timetable may affect their ability to procure rail services during the working timetable period.</p> |
| Co-ordination process. | <p>90. (1) When the Corporation encounters conflicts between different requests during the scheduling process set out in section 89 it shall attempt, through coordination of the requests, to ensure the best possible matching of all requirements.</p> <p>(2) When a situation requiring coordination arises, the Corporation shall have the right, within reasonable limits, to propose infrastructure capacity that differs from that which was requested.</p> <p>(3) The Corporation shall attempt, through consultation with the appropriate train operators, to resolve any conflicts.</p> |

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| Congested infrastructure. | <p>91. (1) Where after coordination of the requested paths and consultation with train operators it is not possible for the Corporation to satisfy requests for infrastructure capacity adequately, the Corporation shall immediately declare the section of infrastructure on which this has occurred to be congested; this shall also be done for infrastructure which can be foreseen will suffer from insufficient capacity in the near future.</p> <p>(2) When infrastructure has been declared to be congested, the Corporation shall carry out a capacity analysis as described in section 93 unless a capacity enhancement plan as described in section 94 is already being implemented.</p> <p>(3) When infrastructure access charges in accordance with section 98 have not been levied or have not achieved a satisfactory result and the infrastructure has been declared to be congested, the Corporation may in addition employ priority criteria to allocate infrastructure capacity.</p> <p>(4) The priority criteria shall take account of the importance of a service to the public, relative to any other service which will consequently be excluded.</p> <p>(5) The procedures which shall be followed and criteria used where infrastructure is congested shall be set out in the network statement</p> |
| Ad hoc requests. | <p>92. (1) The Infrastructure Manager shall respond to ad hoc requests for individual train paths within five working days;</p> <p>(2) information supplied on available spare capacity shall be made available to all train operators who may wish to use this capacity.</p> <p>(3) The Infrastructure Manager shall where necessary undertake an evaluation of the need for reserve capacity to be kept available within the final scheduled working timetable to enable them to respond rapidly to foreseeable ad hoc requests for capacity; this subsection shall also apply in cases of congested infrastructure.</p> |
| Capacity analysis. | <p>93. (1) The objective of capacity analysis is to determine the restrictions on infrastructure capacity which prevent requests for capacity from being adequately met, and to propose methods of enabling additional requests to be</p> |

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| | <p>satisfied; this analysis shall identify the reasons for the congestion and what measures might be taken in the short and medium term to ease the congestion.</p> <p>(2) The analysis shall consider the infrastructure, the operating procedures, the nature of the different services operating and the effect of all these factors on infrastructure capacity; measures to be considered shall include in particular re-routing of services, re-timing services, speed alterations and infrastructure improvements.</p> <p>(3) A capacity analysis shall be completed within 180 days of the identification of infrastructure as congested.</p> |
| <p>Capacity enhancement plan.</p> | <p>94. (1) Within one hundred and eighty days of the completion of a capacity analysis, the Corporation may produce a capacity enhancement plan.</p> <p>(2) A capacity enhancement plan shall be developed after consultation with the train operators who use the relevant congested infrastructure and shall identify—</p> <ul style="list-style-type: none"> (a) the reasons for the congestion; (b) the likely future development of traffic; (c) the constraints on infrastructure development; (d) the options and costs for capacity enhancement, including likely changes to infrastructure access charges. <p>(3) The capacity enhancement plan shall also, on the basis of a cost benefit analysis of the possible measures identified, determine what action shall be taken to enhance infrastructure capacity, including a calendar for implementation of the measures.</p> <p>(4) The capacity enhancement plan shall be approved by the Authority.</p> <p>(5) The Corporation shall cease to levy any infrastructure access charges which are levied for the relevant infrastructure under section 98(2) in cases where—</p> <ul style="list-style-type: none"> (a) it does not produce a capacity enhancement plan; or |

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| | <p>(b) it does not make progress with the action plan identified in the capacity enhancement plan.</p> <p>(6) The Corporation may, subject to the approval of the Authority, continue to levy any infrastructure access charges which are levied for the relevant infrastructure under section 98 (2) if—</p> <p>(a) the capacity enhancement plan cannot be achieved for reasons beyond its control; or</p> <p>(b) the options available are not economically or financially viable.</p> |
| Surrender of train paths. | <p>95. (1) Where the infrastructure is congested, the Corporation shall require a train operator to surrender a train path allocated to it which, over a period of at least thirty days, if the path has been used less than a threshold quota to be laid down in the network statement, unless this was due to non-economic reasons beyond the train operator’s control.</p> <p>(2) The Corporation shall specify in the network statement conditions whereby it will take account of previous levels of use of train paths in determining priorities for the allocation process.</p> |
| Infrastructure capacity for scheduled maintenance. | <p>96. (1) A request for infrastructure capacity to perform maintenance shall be submitted during the scheduling process provided for in section 89.</p> <p>(2) The Corporation shall take into account the effect of infrastructure capacity reserved for scheduled track maintenance on train operators.</p> |
| Special measures to be taken in the event of disturbance. | <p>97. (1) In the event of disturbance to train movements caused by technical failure or accident, the Corporation shall take all necessary steps to restore the normal situation and to that end it shall draw up a contingency plan listing the various public bodies to be informed in the event of serious incidents or serious disturbance to train movements.</p> <p>(2) In an emergency and where absolutely necessary on account of a breakdown making the infrastructure temporarily unusable, the paths allocated may be withdrawn without warning for as long as is necessary to repair the system, the train operator affected by this withdrawal will be notified by the</p> |

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| | <p>Corporation as soon as possible as to the nature of the emergency and for how long the path will be withdrawn.</p> <p>(3) The Corporation may, if it considers it necessary, require train operators to make available the resources which the Corporation deems appropriate to restore the normal situation as soon as possible.</p> |
| Infrastructure access charges. | <p>98. (1) The Corporation shall levy and collect such infrastructure access charges as it determines on train operators using capacity on the Kenya railways network.</p> <p>(2) Except where specific arrangements are made under section 97(2)(, the Corporation shall base the charging scheme in use on the same principles over the whole of the Kenya railways network.</p> <p>(3) The Corporation shall ensure that the application of the charging scheme results in equivalent and non-discriminatory access charges for different train operators that perform services of equivalent nature in a similar part of the market and that the access charges actually applied comply with the conditions set out in the network statement.</p> |
| Services. | <p>99. (1) Train operators shall, on a non-discriminatory basis, be entitled to the minimum access package and track access to service facilities as set out in the First Schedule.</p> <p>(2) The supply of services shall be provided in a non-discriminatory manner and requests by train operators may only be rejected if viable alternatives under market conditions exist.</p> <p>(3) Where the Corporation offers any additional services, it shall supply the services upon request to a train operator at the prescribed fee.</p> <p>(4) The Corporation shall provide a range of ancillary services upon request by a train operator at a prescribed fee,</p> <p>(5) Despite subsection (4), the Corporation shall not be obliged to supply these services.</p> |

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| <p>Criteria for setting of infrastructure access charges.</p> | <p>100.(1) The Corporation shall provide all necessary information on the infrastructure access charges levied and must be able to justify that infrastructure access charges invoiced to each train operator, pursuant to sections 98 to 103, comply with the methodology, rules, and where applicable, scales set out in the network statement.</p> <p>(2) Without prejudice to subsection (3) or to section 98, the infrastructure access charges for the minimum access package and track access to service facilities shall be set at the cost that is directly incurred as a result of operating the train service plus a reasonable industry markup subject to approval by the Cabinet Secretary.</p> <p>(3) The infrastructure access charge may include a charge which reflects the scarcity of capacity of the identifiable segment of the infrastructure during periods of congestion.</p> <p>(4) For the purpose of infrastructure maintenance, additional infrastructure access charges shall be levied for capacity used and such charges shall not exceed the net revenue loss to the Corporation caused by the maintenance.</p> |
| <p>Exceptions to charging principles.</p> | <p>101.(1) In order to obtain full recovery of the costs incurred by the Corporation, the Corporation may levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, while guaranteeing the competitiveness of train operators in relation to other modes of transport, provided that the charging system does not penalize train operators for the productivity gains they achieve and that it does not prevent the use of the railway infrastructure by train operators who can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.</p> <p>(2) For specific investment projects, in the future, or that have been completed not more than fifteen years before the entry into force of this Act, the Corporation may set or continue to set higher infrastructure access charges on the basis of the long-term costs of such projects.</p> |

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| | <p>(3) If the Corporation intends to modify the essential elements of the charging system referred to in subsection (1), it shall make the modified essential elements of the charging system public at least ninety days in advance.</p> |
| <p>Reservation charges.</p> | <p>102. The Corporation may levy an appropriate charge for capacity that is requested but not used providing thereby an incentive for efficient use of capacity by the train operator.</p> |
| <p>Confidentiality of commercial information.</p> | <p>103. The Corporation shall respect the confidentiality of commercial information provided to it by train operators under this chapter.</p> |
| | <p>PART IV – RAILWAY LINES</p> <p>Chapter I – Construction of a Railway Line (Public and Private)</p> |
| <p>Approval required to construct a railway line.</p> <p>Cap 387</p> | <p>104. (1) A person shall not construct a railway line without the approval of the Authority.</p> <p>(2) In granting the approval under this section, the Authority shall consider the following—</p> <p>(a) a book of reference to the plan including a feasibility study indicating the identity of the owners of the lands described in the plan; and</p> <p>(b) proof that it has complied with all applicable requirements of the Environmental Management and Co-ordination Act needed as a proponent of the proposed railway line.</p> <p>(3) The Authority may grant the approval if it considers that the location of the railway line is reasonable, taking into consideration requirements for railway operations and services and the interests of the persons likely to be affected by the railway line.</p> <p>(4) An approval granted under this section may contain any condition that the Authority considers appropriate including –</p> <p>(a) the period of time during which the approval remains in force;</p> <p>(b) the minimum insurance coverage required of the person requesting for the approval during the construction period;</p> |

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| | <p>(c) establishment by that person of effective procedures to deal with complaints of localities and persons affected by the construction of the proposed railway line; and</p> <p>(d) acts or omissions that would cause the approval to be suspended or revoked.</p> <p>(5) The Cabinet Secretary shall prescribe standards for testing, design, construction and maintenance of railways.</p> <p>(6) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction to a fine not exceeding five million shillings.</p> |
| Accommodation works. | <p>105. (1) A person who constructs a railway line shall during the construction of the railway line or as soon as practicable thereafter, construct and maintain the following accommodation works for the benefit of the owners and occupiers of lands adjoining those on which the railway line is constructed—</p> <p>(a) such crossings, bridges or other works as, in the opinion of the Authority, are necessary for the purpose of making good any interruption caused by the construction of the railway line to the use of the lands through which the railway line is constructed;</p> <p>(b) such culverts, drains or other works as, in the opinion of the Authority, are necessary to convey water as freely as is practicable from or to such adjoining lands as before the construction of the railway line:</p> <p>(2) Notwithstanding the provisions of sub-section (1)—</p> <p>(a) nothing in this section shall require the construction or the maintenance of any accommodation works in such a manner as to prevent or obstruct the proper operation of the railway line;</p> <p>(b) where suitable accommodation works for the crossing of roads or watercourses have been constructed under this section and such road or watercourse is afterwards diverted by some person other than the person constructing the railway line, then, the person constructing the</p> |

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| | <p>railway line shall not be required to construct other accommodation works for the crossing of the road or watercourse.</p> |
| <p>Additional accommodation works.</p> | <p>106. If at any time—</p> <p>(a) the owner or occupier of any lands on which a railway line is constructed desires any accommodation works in addition to those, if any, constructed by the person constructing the railway line under section 105 (1); or</p> <p>(b) any public body proposes to construct a public road or any other works across a railway line, then the owner, occupier or public body, as the case may be, may require the person constructing the railway line to construct such accommodation works—</p> <p>(i) as may be agreed between the person constructing the railway line and the owner, occupier or public body; or</p> <p>(ii) if no such agreement is reached, as may be determined by the Authority, and the cost of constructing such accommodation works shall be borne by the owner, occupier or public body requiring them.</p> |
| <p>Construction of railway across a public road.</p> | <p>107.(1) Where, pursuant to the approval granted under Section 104, the person constructing a railway line proposes to construct a railway line across a public road, the Authority may, subject to subsection (3), require the person constructing the railway line to construct the railway line in such a manner that it does not cross such road on the level and to execute such other works as may be necessary for the safety of the public and the person constructing the railway line shall comply with such requirements.</p> <p>(2) Where any railway line has been constructed so as to cross a public road on the level, the Authority may, subject to subsection (3), require the person constructing the railway line—</p> <p>(a) to erect such gates; or</p> <p>(b) to raise or lower the level of the public road so that it crosses the railway line above or below and not on the level, and to execute such other works</p> |

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| | <p>as may be necessary for the safety of the public, and the person constructing the railway line shall comply with such requirements.</p> <p>(3) The Authority shall, before making any requirement under this section, communicate with the person constructing the railway line and the public body responsible for the maintenance of such public roads and shall take into consideration any representations made by the person constructing the railway line or that public body responsible for the road.</p> <p>(4) Where, as a result of a determination made by the Authority under this section, any works are to be constructed by the person constructing the railway line, then the manner of the construction of such works and the apportionment of the cost of construction and maintenance thereof shall be determined by agreement between the person constructing the railway line and the public body responsible for the maintenance of the public road. If no such agreement is reached, it shall be determined by the Authority.</p> <p>(5) where a person intends to construct a road across an existing railway line, the person shall:</p> <ul style="list-style-type: none">(a) Seek approval from the Authority and concurrence from infrastructure manager.(b) Put in place all the necessary safety measures as prescribed by the Authority. <p>(6) The safety measures at a level crossing shall ensure that a train has the right of way at all times.</p> |
| Certification of a new railway line. | <p>108. (1) Before any section of a new railway line is declared open for the public carriage of passengers or goods, the Authority shall furnish to the person having constructed the new railway line with a certificate attesting that such section complies with the standards and may, in the opinion of the professional Engineer of the Authority, be opened for the public carriage of passengers or goods without danger to the public; and</p> |

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| | <p>(2) Upon the certificate referred to in subsection (1) being furnished, the Authority may by notice in the Gazette declare the section to which the certificate refers to be open for the public carriage of passengers or goods.</p> <p>(3) For the purpose of this section, the expression “new railway line” does not include any diversion or re-alignment of track made to any existing railway line.</p> |
| <p>Register of infrastructure and rolling stock</p> | <p>109. An operator or infrastructure manager shall maintain a register of its railway infrastructure and rolling stock.</p> |
| | <p>Chapter II – Operation of A Private Railway Line</p> |
| <p>Operation of a railway line.</p> | <p>110. (1) A person shall not operate rolling stock on a private railway line without a railway operating licence from the Authority in accordance with this Act.</p> <p>(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable, on conviction to a fine not exceeding one hundred million shillings.</p> |
| <p>Classes of licenses.</p> | <p>111. (1) The Authority may issue the following classes of railway line operating licenses for the operation of a private railway line—</p> <ul style="list-style-type: none"> (a) a long distance passenger service license issued for the carriage of passengers on long-haul or intercity journeys; (b) a commuter line service license issued for the carriage of passengers in urban or sub-urban areas; (c) a freight service license issued for the carriage of goods; (d) an infrastructure management license issued to the infrastructure manager or one or more of its subcontractors for the purpose of maintaining the railway line and for assisting the holders of a license issued under paragraphs (a), (b) or (c) in cases of emergency; or (e) a license combining any or all of the above classes of licenses issued under paragraphs (a), (b) or (c). |

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| | (3) Sections 76 and section 83 of this Act shall apply with the necessary modifications to applications made under this chapter for a private railway line operating license. |
| | PART V – RAILWAY SAFETY |
| | Safety management, certification, authorization and reporting |
| Operation of rolling stock on the Kenya Railways network. | <p>112. (1) A train operator shall not operate rolling stock on the Kenya Railways network unless the train operator—</p> <ul style="list-style-type: none"> (a) has established and maintains a safety management system which meets the requirements set out in section 116; and (b) holds a current safety certificate in relation to the operation in question. <p>(2) The Corporation shall not permit the Kenya Railways network to be used to operate rolling stock unless—</p> <ul style="list-style-type: none"> (a) the Corporation has established and maintains a safety management system which meets the requirements referred to in section 116(3); (b) the Corporation holds a current safety authorization in relation to the Kenya Railway network; and (c) the train operator who intends to use the Kenya Railway network has complied with subsection (1). |
| Operation of rolling stock on a Private railway line | <p>113. (1) A private railway line operator shall not operate rolling stock on a private railway line unless the railway line operator—</p> <ul style="list-style-type: none"> (a) has established and maintains a safety management system which meets the requirements set out in section 115; and (b) holds a current safety certificate in relation to the operation in question. <p>(2) An infrastructure manager shall not permit the private railway line under its management to be used for the operation of rolling stock unless—</p> |

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| | <ul style="list-style-type: none">(a) the infrastructure manager has established and maintains a safety management system which meets the requirements set out in section 115(2);(b) the infrastructure manager holds a current safety authorization in relation to the railway line in question; and(c) the private railway line operator who intends to use the railway line has complied with subsection (1). |
| Safety management system for the Kenya Railway network. | <p>114. (1) The requirements for a safety management system are as set out in the Third Schedule of this Act.</p> <p>(2) The safety management system shall –</p> <ul style="list-style-type: none">(a) ensure that the Kenya Railways network—<ul style="list-style-type: none">(i) can achieve the prescribed common safety targets; and(ii) is in conformity with relevant safety rules;(b) apply the relevant parts of the prescribed common safety methods;(c) meet the requirements and contains the elements set out in the Third Schedule, adapted to the character, extent and other characteristics of the operation in question;(d) ensure the control of all categories of risk including new or existing risks associated with the operation in question which, without prejudice to the generality of the foregoing, shall include such risks relating to the—<ul style="list-style-type: none">(i) supply of maintenance and material; and(ii) use of contractors.(e) it takes into account, where appropriate and reasonable, the risks arising as a result of activities carried on by other persons; and(f) all parts of it are documented. <p>(3) The requirements for a safety management system referred to in subsection (1) shall —</p> |

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| | <p>(a) take into account the effects of operations of train operators;</p> <p>(b) contain provisions to ensure that the way in which the Corporation carries out its operation makes it possible for any train operator to operate in accordance with—</p> <ul style="list-style-type: none">(i) the relevant safety rules; and(ii) the means adopted by the train operator to meet the requirements referred to in section 116 and 117, approved by the Authority ;and <p>(c) co-ordinate the emergency procedures of the Corporation with those of the train operators.</p> |
| Safety management system for Private railway line. | <p>115. The requirements for a safety management system referred to in section 115 are that—</p> <p>(a) it is adequate to ensure that the relevant statutory provisions which make provision in relation to safety will be complied with in relation to the operation in question;</p> <p>(b) it meets the requirements and contains the elements set out in the Third Schedule, adapted to the character, extent and other characteristics of the operation in question;</p> <p>(c) it ensures the control of all categories of risk associated with the operation in question which, without prejudice to the generality of the foregoing, shall include such risks relating to the—</p> <ul style="list-style-type: none">(i) supply of maintenance and material;(ii) use of contractors; and(iii) placing in service of new or altered rolling stock the design or construction of which incorporates significant changes compared to any rolling stock already in use on the railway line and which changes would be capable of significantly increasing an existing risk or creating a significant safety risk; |

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| | <p>(d) it takes into account, where appropriate and reasonable, the risks arising as a result of activities carried on by other persons; and</p> <p>(e) all parts of it are documented.</p> |
| <p>Safety certificate.</p> | <p>116. (1) An application for a first safety certificate in respect of an operation shall—</p> <p>(a) be made to the Authority by a train operator;</p> <p>(b) include the information set out in—</p> <p>(i) Part 1 of the Fourth Schedule in respect of a Kenya Railways network; and</p> <p>(ii) Part 2 of the Fourth Schedule in respect of a Private railway line.</p> <p>(2) Within 120 days of the date of receipt of the application, the Authority shall—</p> <p>(a) issue a safety certificate for the operation in question; or</p> <p>(b) notify the applicant that it has declined the application, and in either case shall give reasons for its decision.</p> <p>(3) A safety certificate shall—</p> <p>(a) specify the type and extent of the operation in respect of which it is issued; and</p> <p>(b) certify acceptance by the Authority that the applicant has provided sufficient evidence—</p> <p>(i) to demonstrate that the safety management system of the applicant meets the requirements set out in section 114(1) in respect of a Kenya Railway Corporation network application or section 115 in respect of a private railway line application; and</p> <p>(ii) of the provisions adopted by the applicant to meet the safety rules that are necessary to ensure safe operation on the Kenya Railway network or the private railway line, as the case may be, and reference the information on which such acceptance is based; and</p> <p>(c) be valid for no longer than five years from the date of issue and the period of validity shall be indicated in the safety certificate.</p> |
| <p>Amended safety certificate.</p> | <p>117. (1) Where it is proposed that the type or extent of an operation in respect of which a safety certificate has been issued is to be substantially changed, the</p> |

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| | <p>holder of the safety certificate shall apply to the Authority for the safety certificate to be amended and the substantial change of operation shall not be carried out until the safety certificate is so amended.</p> <p>(2) An application for an amended safety certificate under this section shall—</p> <p>(a) provide details of the change proposed; and</p> <p>(b) provide details of any consequential changes to any information sent to the Authority in respect of the operation in question which remains relevant to that operation.</p> <p>(3) Within 120 days of the date of receipt of the application the Authority shall—</p> <p>(a) issue a notice making any necessary amendments to the matters set out in the safety certificate; or</p> <p>notify the applicant that the application has been rejected</p> <p>In either case shall give reasons for its decision.</p> |
| <p>Renewal of safety certificate.</p> | <p>118. (1) At least ninety days before the expiry of a safety certificate the holder of that safety certificate may apply to the Authority for renewal of the safety certificate.</p> <p>(2) An application for renewal of a safety certificate shall set any changes of particulars in the safety certificate that is relevant to the operations.</p> <p>(3) Sections 118 (2) to (3) shall apply to an application for and the issuing of a renewed safety certificate as they apply to an application for and the issuing of a first safety certificate under section 116.</p> |
| <p>Safety authorization.</p> | <p>119. (1) An application for a safety authorization in respect of a railway line shall -</p> <p>(a) be made to the Authority by the infrastructure manager;</p> <p>(b) set out particulars of -</p> <p>(i) the infrastructure in question;</p> |

- (ii) how the safety management system of the applicant meets the requirements in section 114(1) in relation to a Kenya Railways network application or in section 115 in relation to a private railway line application; and
- (iii) how the provisions adopted by the applicant meet any requirements which are necessary for the safe design, maintenance and operation of the infrastructure in question.

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

- (a) issue a safety authorization in relation to the infrastructure in question; or
- (b) notify the applicant that it has rejected the application;

In either case shall give reasons for its decision.

(3) A safety authorization shall -

- (a) specify the infrastructure in respect of which the authorization is issued;
- (b) accept that the applicant has provided sufficient evidence to demonstrate that the safety management system of the applicant meets the requirements—
 - (i) referred to in section 114(1) in relation to a Kenya Railway network application; or
 - (ii) in section 115 in relation to a private railway line application.
- (c) accept that the applicant has provided sufficient evidence of the provisions adopted to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question;

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| | <p>(d) reference the information on which the acceptance referred to in paragraphs (b) and (c) is based; and</p> <p>(e) be valid for no longer than five years from the date of issue and the period of validity shall be indicated in the safety authorisation.</p> |
| <p>Amended safety authorization</p> | <p>120. (1) Where it is proposed that a substantial change is to be made to—</p> <p>(a) the infrastructure in respect of which a safety authorization has been issued; or</p> <p>(b) the principles of operation and maintenance of such infrastructure,</p> <p>then the holder of the safety authorization shall apply to the Authority for the safety authorization to be amended accordingly and the substantial change shall not be made until the safety authorization is so amended.</p> <p>(2) An application for an amended safety authorization under this section shall provide details of—</p> <p>(a) the substantial changes proposed; and</p> <p>(b) any consequential changes to any information sent to the Authority in respect of the operation in question which remains relevant to that operation.</p> <p>(3) Within 120 days of the date of receipt of the application the Authority shall</p> <p>(a) issue a notice making any necessary amendments to the matters set out in the safety authorization; or</p> <p>(b) notify the applicant that it has rejected the application; and</p> <p>In either case shall give reasons for its decision.</p> |
| <p>Renewal of safety authorization.</p> | <p>121. (1) At least ninety days before the expiry of a safety authorization, the holder of the safety authorization may apply to the Authority for renewal of that safety authorization to be issued for the infrastructure in question.</p> |

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| | <p>(2) An application for renewal of a safety authorization shall set out particulars of any changes to any information sent to the Authority in respect of the operation in question, which remains relevant to that operation.</p> <p>(3) Sections 121(2) to (3) shall apply to an application for and the issuing of a renewed safety authorization as they apply to an application for and the issuing of a first safety authorization.</p> |
| <p>Notice of changes by holder of a safety certificate or a safety authorization.</p> | <p>122. (1) The holder of a safety certificate or a safety authorization shall, without delay, notify the Authority of any major changes—</p> <ul style="list-style-type: none"> (a) to the means by which it meets the requirements relating to the safety management system as set out in – <ul style="list-style-type: none"> (i) section 114(1) in relation to an operation of a train operator on the Kenya Railways network; or (ii) section 115 in relation to an operation of a railway line operator on the private railway line; (b) in the case of a train operator or railway line operator, to the provisions adopted by it to meet any requirements necessary to ensure safe operation on the transport system in relation to the operation in question; or (c) in the case of the infrastructure manager, the provisions adopted by the infrastructure manager to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question; (d) when holder of a certificate first commence work directly relating to the operation which is of a type which has not previously been carried out in relation to that operation; or (e) when types of rolling stock which are new to the operation in question are first introduced. |
| <p>Revocation of safety certificate</p> | <p>123. (1) The Authority shall revoke a safety certificate if it is satisfied that the holder—</p> |

- (a) is in breach of the conditions of that safety certificate and that there is a significant risk arising as a result; or
- (b) is not operating rolling stock on the railway line as intended pursuant to that safety certificate and has not done so throughout the period of one year commencing with the date of issue of the safety certificate by the Authority.

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

- (a) any part of the requirements relating to the safety management system set out in—
 - (i) section 114 (1) in relation to an operation carried out on the Kenya Railway network;
 - (ii) section 115 in relation to an operation carried out on a private railway line; or
 - (iii) that the provisions adopted by the applicant are sufficient to meet any requirements that are necessary to ensure safe operation on the transport system in question in relation to the operation in question;

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

- (a) notify the holder that—
 - (i) it is considering revoking that safety certificate and the reasons why;
 - (ii) within a period specified in the notice, which shall be not less than twenty eight days, the holder may respond in writing to the Authority or, if the holder so requests, may make oral representations to the Authority; and
- (b) consider any representations which are duly made under subsection 3(a)(ii).

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| | <p>(4) Where the Authority revokes a safety certificate, it shall send to the holder the decision of revocation and a statement of the reasons for revocation.</p> |
| Revocation of safety authorization | <p>124. (1) The Authority shall revoke a safety authorization if it is satisfied that the holder is no longer satisfying the conditions of that safety authorization and there is a significant risk arising as a result.</p> <p>(2) In this section, “conditions” means—</p> <ul style="list-style-type: none">(a) any part of the requirements relating to the safety management system—<ul style="list-style-type: none">(i) referred to in section 114(1) in relation to an operation carried out on the Kenya Railways network;(ii) in section 115 in relation to an operation carried out on a private railway line; or(iii) that the provisions adopted by the applicant are sufficient to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question. <p>(3) Before revoking any safety authorization, the Authority shall—</p> <ul style="list-style-type: none">(a) notify the holder that—<ul style="list-style-type: none">(i) it is considering revoking that safety authorization and the reasons thereof;(ii) within a period specified in the notice, which shall be not less than twenty-eight days, the holder may respond in writing to the Authority or, if the holder so requests, may make oral representations to the Authority; and(b) consider any representations which are duly made under subsection 3 (a) (ii). <p>(4) Where the Authority revokes a safety authorization, it shall send to the holder the decision of revocation a statement of the reasons why.</p> |

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| <p>General provisions relating to safety certificates and safety authorizations.</p> | <p>125. (1) Where an application is made under this chapter for a safety certificate or for an amended safety certificate which relates to an operation on the railway line then—</p> <ul style="list-style-type: none">(a) one application may be made for that operation but it shall be split into separate parts for the Kenya Railways network and the private railway line; and(b) this section shall apply to those parts as if they were a Kenya Railways network application and a private railway line application, <p>except that where the same information is required it need not be stated twice.</p> <p>(2) A person may make one application for an operation in relation to which it requires both a safety certificate and a safety authorization or an amended safety certificate and an amended safety authorization.</p> <p>(3) An application under sub section (2) shall be split into separate parts relating to the safety authorization and the safety certificate.</p> <p>(4) This section shall apply to the parts referred to in subsection (3) as if they were an application for a safety authorization and a safety certificate or an amended safety authorization and an amended safety certificate, except that where the same information is required it need not be stated twice.</p> <p>(5) The Cabinet Secretary may make regulations to give effect to this chapter.</p> |
| <p>General powers of search and inspection</p> | <p>126. (1) The Authority, may without prejudice to all other written laws, at all reasonable times—</p> <ul style="list-style-type: none">(a) enter, inspect and examine any infrastructure, rolling stock and other property on which railway operations are being conducted;(b) require the production of, inspect, examine, and take copies of licenses, permits, registers, records of any kind and other documents relating to this chapter and the carrying out of railway operations;(c) install any equipment on any infrastructure and other property on which railway operations are being conducted or on any rolling stock used for railway operations for the purposes of monitoring compliance; and |

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

(2) A person who—

(a) hinders or obstructs the Authority, or an inspector authorized by Authority, in the exercise of their general powers of search and inspection;

(b) fails to comply with a lawful order or requirement made by the Authority commits an offence.

(3) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding three years, or a fine of not exceeding one million shillings or both.

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| <p>Annual safety reports</p> | <p>127. (1) Any train operator who carries out operations on the railway line shall submit to the Authority an annual safety report in respect of its operations relating to the previous calendar year, which shall contain—</p> <ul style="list-style-type: none"> (a) information on how the transport operator’s safety targets, referred to in paragraph 2(b) of the Third Schedule, are met; (b) the results achieved through putting the transport operator’s safety plans, referred to in paragraph 2(b) of the Third Schedule, into effect; (d) the findings of safety auditing carried out pursuant to the procedures set out in paragraph 2(k) of the Third Schedule; and (e) comments on any deficiencies or malfunctions relating to the operation of rolling stock or the management of infrastructure relating to the operation in question that may be relevant to the safety of that railway network; <p>(2) The first annual report required under subsection (1) shall be sent by 30th June following the first calendar year of the coming into force of this Act and subsequent reports by 30th June in each subsequent calendar year.</p> |
| <p>Additional certifications by the Authority</p> | <p>128. Without prejudice to section 181 the Cabinet Secretary, in consultation with the Authority, may make regulations prescribing the procedure by which the Authority shall certify—</p> <ul style="list-style-type: none"> (a) infrastructure and rolling stock; (b) safety critical workers of the Corporation, of the infrastructure manager of a railway line, of a train operator or of a railway line operators; and (c) the safety standards and requirements that must be met by the relevant applicant. |
| | <p>Chapter II – Dispute Resolution</p> |

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| <p>Dispute resolution by the Authority.</p> | <p>129.(1) A person aggrieved by the decisions of the Corporation under this Act may lodge a complaint with the Authority.</p> <p>(2) The Authority may request further information from the parties to the dispute, and such information shall be availed to the Authority within fourteen days from the date of receipt of the request.</p> <p>(3) The Authority shall make a decision on the dispute within sixty days from the date of the receipt of the information requested in subsection (2).</p> <p>(4) Where the Authority does not request for further information as per subsection (2) the Authority shall make a decision on the dispute within sixty days from the date of receipt of the complaint.</p> |
| <p>Appeals against the decision of the Authority.</p> | <p>130. A person aggrieved by the decision of the Authority under this Act may appeal to the Appeals Board within fourteen days of the decision of the Authority.</p> |

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| <p>Railway Appeal Board.</p> | <p>131. (1) There is established an Appeals Board to be known as the Railway Appeals Board for the purposes of hearing and determining appeals in accordance with this Act.</p> <p>(2) The tribunal shall consist of—</p> <p>(a) a chairperson who shall be nominated by Cabinet Secretary from among persons qualified to be Judges of the High Court; and</p> <p>(b) four other persons who shall be appointed by the Judicial Service Commission and shall possess knowledge and experience in railway matters and who are not in the employment of the Government.</p> <p>(3) The members of the Appeals Board shall hold office for a term of three years and shall be eligible for reappointment one further term of three years.</p> <p>(4) The quorum for a meeting of the Appeals Board shall be the Chairperson and two other members.</p> <p>(5) Save as may be prescribed, the Appeals Board shall regulate its procedure and proceedings as it may consider appropriate.</p> <p>(6) The Judicial Service Commission shall make rules for regulating the practice and procedure of the Appeals Board.</p> |
| <p>Appeal to High Court</p> | <p>132. A person dissatisfied by the decision of the Appeals Board may within fourteen days of the decision appeal to the High Court.</p> |
| | <p>PART VI— CARRIAGE OF PASSENGERS AND GOODS</p> <p>Chapter I - Responsibility as a Carrier</p> <p><i>Passengers</i></p> |
| <p>Liability for loss of life, etc. of passengers.</p> | <p>133. A rail carrier shall not be liable for the loss of life of, or for personal injury to, any passenger carried by it except where the loss of life or personal injury is caused by the lack of ordinary care, diligence or operational skills on the part of the rail carrier or of any authorized employee.</p> |
| <p>No liability for delay in arrival of passengers, etc.</p> | <p>134. (1) A rail carrier shall not be liable for any loss arising from the delay to any passenger caused—</p> <p>(a) by the failure of any train to start on or complete any journey; or</p> |

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| | <p>(b) by the late starting or late arrival of any train.</p> <p>(2) The delay in sub-section (1) shall not be due to lack of ordinary care, diligence or operational skills on the part of the rail carrier or of any authorized employee.</p> <p>(3) Despite the provisions of subsection (1) and (2), a rail carrier shall take all reasonable measure to ensure that all passengers reach their destination.</p> |
| | <p>Goods</p> |
| <p>Goods carriage and liability</p> | <p>135. (1) A rail carrier shall be liable for any loss or mis-delivery of, or damage to, goods carried by it occurring while the goods are in transit from any cause whatsoever unless the rail carrier proves that such loss, mis-delivery or damage, arose from—</p> <ul style="list-style-type: none"> (a) act of God; (b) act of war; (c) act of terrorism; (d) seizure under legal process; (e) act or order of the Government; (f) act or omission of the consignor, his servant or agent; (g) inherent liability to wastage in bulk or weight, latent or inherent defect, vice or natural deterioration of the goods; (h) casualty of unauthorized persons on board; or (i) fire or explosion: <p>Provided that where the loss, mis delivery or damage occurs in any of the cases specified in this subsection due to the failure of the rail carrier, or of any authorized employee, to use reasonable foresight and care in the carriage of goods, the rail carrier shall not be relieved from liability for such loss, misdelivery or damage.</p> <p>(2) The rail carrier shall not be liable for loss, misdelivery or damage in respect of goods in relation to which an account false in any material particular has been given under section 139 or any incorrect or insufficient address for delivery has been given and such loss, misdelivery or damage is in any way caused by such false account or incorrect or insufficient address.</p> <p>(3) The rail carrier shall not in any circumstances be liable for loss, misdelivery or damage in respect of goods—</p> |

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| | <p>(a) where there has been fraud on the part of the consignor;</p> <p>(b) unless a document acknowledging receipt of such goods for carriage by the rail carrier has been given; or</p> <p>(c) where the loss, misdelivery or damage arises from insufficient or improper packing or from riots, civil commotion, strikes, lock-outs, stoppage or restraint of labor from whatsoever cause whether partial or general.</p> <p>(4) The rail carrier shall not in any circumstances be liable for loss of a particular market whether held daily or at intervals where loss, misdelivery or damage has been caused by consignor or consignee.</p> |
| <p>Liability for delay, etc., of goods.</p> | <p>136. The rail carrier shall not be liable for any loss arising from delay to, detention of or deviation in the carriage of goods unless such delay, detention or deviation is caused by the want of reasonable foresight and care on the part of the rail carrier.</p> |
| <p>Limitation of liability for animals.</p> | <p>137. (1) The liability of the rail carrier in respect of any animal shall not in any case exceed the appropriate amount set out in the Tariff Book, unless at the time of the acceptance of such animal by the rail carrier for carriage, the consignor or his agent, declared that the value of the animal exceeded such appropriate amount and paid, or agreed to pay, such additional charges as may be determined in the Tariff Book in respect of such excess value, and thereupon the liability of the rail carrier shall not in any case exceed the declared value.</p> <p>(2) In every proceeding against the rail carrier for the recovery of any sum in respect of any animal, the burden of proving the value of the animal and, where the animal has been injured, the extent of the injury, shall be upon the claimant.</p> |

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| <p>Limitation of liability for loss, etc., of specific articles.</p> | <p>138.(1) The liability of the rail carrier in respect of any prescribed article, and contained in any parcel or package, shall not, in any circumstances, exceed twenty thousand shillings unless at the time of acceptance of such parcel or package by the rail carrier for carriage, the consignor or his agent declared that the value of such article or articles exceeded twenty thousand shillings and paid, or agreed to pay, such additional charges as may be determined in the Tariff Book in respect of such excess value; and thereupon the liability of the rail carrier shall not in any case exceed the declared value.</p> <p>(2) It shall be a condition of the carriage of any parcel or package containing any article or articles the value of which has been declared to be in excess of twenty thousand shillings that the contents of such parcel or package may be inspected by an authorized employee at the time of such declaration.</p> <p>(3) In any proceedings against the rail carrier for the recovery of any sum in respect of any article or articles the value of which has been declared to be in excess of twenty thousand shillings, the burden of proving the value of the article or articles and of any loss or damage thereto shall be upon the consignor or his agent.</p> |
| <p>Limitation of liability for loss, etc., where false account is given.</p> | <p>139. The liability of the rail carrier in respect of any goods carried by the rail carrier in relation to which an account false in any material particular has been given under section 138, shall not in any case exceed the value of the goods as calculated in accordance with the description contained in such false account.</p> |
| <p>Limitation of liability by contract</p> | <p>140.(1) The liability of the rail carrier under this Act for the carriage of goods by the carrier shall be limited by contract made in accordance with the provisions of this section.</p> <p>(2) A contract limiting the liability of the rail carrier under this Act for the carriage of goods by the rail carrier shall, to the extent to which it limits such liability but not otherwise, be void unless it is in writing signed by or on behalf of the person delivering the goods to the rail carrier.</p> |
| <p>Limitation of liability by regulations.</p> | <p>141. The Cabinet Secretary may prescribe the conditions and amounts by which a rail carrier may limit its liability under this Act.</p> |

| | Chapter II – Responsibility of Rail carrier as a Warehouseman |
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| Liability for loss of goods, etc. | <p>142. (1) Subject to this Act, or any contract, the rail carrier shall not be liable for the loss, misdelivery or detention of, or damage to, goods—</p> <ul style="list-style-type: none">(a) delivered to, or in the custody of, the rail carrier otherwise than for the purpose of carriage; or(b) accepted by the rail carrier for carriage where such loss, misdelivery, detention or damage occurs otherwise than while the goods are in transit. <p>(2) except where the loss, misdelivery, detention or damage is caused by the want of reasonable foresight and care on the part of the rail carrier or of any employee:</p> <p>Provided that—</p> <ul style="list-style-type: none">(a) the rail carrier shall in no case be liable for the loss, misdelivery, detention or damage arising from—<ul style="list-style-type: none">(i) act of God;(ii) act of war;(iii) act of terrorism;(iv) seizure under legal process;(v) act or order of the Government;(vi) act or omission of the consignor, consignee, or depositor, or of the servant or agent of any such person;(vii) fire, flood, storm, riots, civil commotions, strikes, lock-outs, stoppage or restraint of labor from whatever cause whether partial or general;(viii) inherent liability to wastage in bulk or weight, latent or inherent defect, vice or natural deterioration;(ix) deficiency in the contents of unbroken packages; or |

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| | <p>(x) insufficient packing or leakage from defective drums, containers or packages; and</p> <p>(b) where the loss, mis delivery, detention or damage occurs—</p> <p>(i) In relation to goods accepted by the rail carrier for carriage otherwise than while the goods are in transit, the limitation of the liability of the Corporation contained in sections 137,138 and 139, or limited by any contract under section 142, shall continue to apply;</p> <p>(ii) In relation to goods accepted by the rail carrier for warehousing, the limitation of the liability of the rail carrier contained in section 138 shall apply.</p> |
| <p>Limitation of liability for loss, etc., of goods deposited in cloakroom.</p> | <p>143. (1)The rail carrier shall not be liable for any loss, damage or delay in the delivery of an goods deposited in a cloakroom.</p> <p>(2) The rail carrier shall charge for the use of a cloakroom as per the rates provided in the tariff book.</p> <p>(3) For the purposes of this section the expression “cloakroom” means any place provided by the rail carrier in connection with the transport services provided by it as a facility for the temporary deposit of goods by passengers and other persons.</p> |
| | <p>Chapter III – Operations of the rail carrier</p> <p><i>Passenger and luggage</i></p> |
| <p>Rail carrier shall determine conditions for the carriage of passengers and luggage.</p> | <p>144.(1) The rail carrier shall determine—</p> <p>(a) conditions upon which passengers and luggage shall be carried by the rail carrier;</p> <p>(b) different conditions in different cases;</p> <p>(c) the conditions to be published in the Tariff Book and when such conditions shall take effect; and</p> <p>(d) the different classes of accommodation available to passengers in trains of the rail carrier.</p> |

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| | <p>(2) The fares and charges for the carriage of passengers and luggage by the rail carrier shall be published in the Tariff Book and shall take effect on the date of such publication or on such later date as may be specified therein.</p> <p>(3) Despite subsection (2), provision shall be made for the carriage of a specified amount of baggage by a passenger free of charge, and different amounts may be determined for passengers travelling by different classes.</p> <p>(4) Despite subsection (1), the rail carrier may, in relation to the special circumstances of any particular case, determine conditions, fares and charges applicable to such case for the carriage of passengers and luggage by the rail carrier and such conditions, fares and charges shall have immediate effect in relation to such case.</p> <p>(5) the conditions, fares and charges provided for in subsection (4), shall—</p> <ul style="list-style-type: none">(a) as soon as practicable after such determination, be published in the Tariff Book; and(b) not constitute an undue preference. |
| <p>General right of persons to be carried as passengers.</p> | <p>145. (1) Subject to this Act, any person who has tendered to an authorized employee of the rail carrier the proper fare for the ticket the person desires, shall be entitled to obtain such ticket and to be carried as a passenger by the rail carrier in accordance with the conditions subject to which the ticket is issued.</p> <p>(2) Despite subsection (1), where, in the opinion of an authorized employee, a person who applies for a ticket, or a person in possession of a ticket or free pass, appears—</p> <ul style="list-style-type: none">(c) to be suffering from any contagious or infectious disease declared by the Cabinet Secretary responsible for Health; or(d) to be uncontrollable, <p>such person shall not be entitled to obtain such ticket or to be carried as a passenger save under, and in accordance with, any special provisions dealing with the carriage of any such person.</p> |

General conditions on which tickets, etc., issued.

- 146.** (1) Every ticket and free pass shall be issued by the rail carrier subject to the provisions of this Act and, in addition to any other conditions, to the condition that—
- (a) there is room available in the train of the class for which the ticket or free pass is issued;
 - (b) an authorized employee may require the passenger to move from one compartment to another of the same class for the purpose of the better use of the accommodation of the train other than for the purposes of a free pass ticket holder; and
 - (c) the passenger shall, on being required so to do, present his ticket or free pass for examination by an authorized employee and shall deliver up the ticket or pass to the employee—
 - (i) in the case of a ticket or free pass issued for a particular journey, at or near the end of such journey;
 - (ii) in the case of a season ticket or free pass, at the expiration of the period for which it was issued.
- (2) If no room as is referred to in paragraph (a) of subsection (1) is available, the holder of a ticket—
- (a) may obtain a refund of the fare which he has paid on his returning the ticket to an authorized employee as soon as practicable;
 - (b) may elect, subject to there being available room to travel on a different time or date; or
 - (c) may elect, subject to there being available room to travel in a lower class and shall, upon drawing as soon as practicable the attention of an authorized employee to such fact, be entitled to obtain from such employee a certificate that he is entitled to a refund and shall, on presenting that certificate to an authorized employee, be entitled to a refund of the difference between the fare which he paid and the fare payable in respect of the class in which he travelled:

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| | <p>Provided that the provisions of this subsection relating to a refund shall not apply to the holder of a season ticket.</p> |
| <p>Persons without valid ticket, etc., may be removed from train, etc.</p> | <p>147.(1) A person shall not be upon any train of the rail carrier for the purposes of travelling therein as a passenger unless he is in possession of a valid ticket or free pass;</p> <p>(2) An Authorized employee of the rail carrier shall require any person found on a train without a valid ticket or free pass, to leave the train and, if the person does not do so, the person may be removed therefrom with such force as may be reasonable and necessary in the circumstances.</p> <p>(3) Any person who contravenes this section commits an offence.</p> |
| <p>Fares, etc., payable by persons travelling without a valid ticket, etc.</p> | <p>148. (1) A person who—</p> <p>(a) travels on any train of the rail carrier without a valid ticket or free pass; or</p> <p>(b) being in, or having come from, any such train does not present his ticket or free pass for examination or does not deliver up his ticket or free pass in accordance with the conditions on which the ticket or free pass is issued, shall be liable to pay on demand by an authorized employee the fare for the distance he has travelled or proposes to travel and, in addition, such excess charges as the rail carrier may determine and publish in the Tariff Book; and for the purpose of ascertaining such fare it shall be presumed that such person has travelled from the station—</p> <p>(i) from which the train originally started; or</p> <p>(ii) if the tickets or free passes of passengers have been examined during the journey and found to be in order, from the place where they were last examined and found in order,</p> <p>unless he satisfies such authorized employee to the contrary.</p> <p>(2) Any person who—</p> <p>(a) travels in a class of a train higher than that for which he is in possession of a valid ticket or free pass; or</p> |

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| | <p>(b) travels in a train beyond the place authorized by his ticket or free pass, shall be liable to pay on demand by an authorized employee a fare equal to the difference between the fare he has paid and that which he should have paid and, in addition, such excess charges as the rail carrier may determine and publish in the Tariff Book.</p> <p>(8) If, on demand by an authorized employee, any person refuses to pay the fare and excess charge for which he is liable under this section, any authorized employee or any police officer may, if there is reasonable ground for belief that there would be difficulty or delay in bringing such person before the court by any other means, arrest and detain that person without a warrant and bring him, as soon as practicable, before a court having jurisdiction to deal with him in accordance with the provisions of this Act.</p> <p>(9) Any person who contravenes this section commits an offence.</p> |
| <p>Conditions of carriage of luggage</p> | <p>149. Subject to this Act, every passenger shall on payment of the appropriate charge, if any, be entitled to deliver his luggage to an authorized employee for carriage by the rail carrier in the appropriate part of the train and to receive a document of receipt for each piece of luggage so delivered.</p> <p>(2) Luggage shall be carried by the rail carrier subject to the provisions of this Act, and, in addition to any other conditions—</p> <p>(a) to the condition that unless the luggage is delivered to an employee for carriage in accordance with subsection (1), it shall be carried at the risk of the passenger; and</p> <p>(b) to the condition that the provisions of this Act in respect of the carriage of goods shall apply to the carriage of luggage save in so far as it is otherwise specifically provided</p> |
| | <p>Goods</p> |
| <p>Rail carrier may determine conditions for carriage of goods, etc.</p> | <p>150. (1) The rail carrier may, subject to the provisions of this Act, determine the conditions upon which goods shall be carried or warehoused by the rail carrier and different conditions may be determined in different cases; and such conditions shall be published in the Tariff Book and shall,</p> |

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| | <p>subject as aforesaid, have effect from the date of such publication or from such later date as may be specified therein.</p> <p>(2) Notwithstanding subsection (1), the rail carrier may, in relation to the special circumstances of any particular case, determine conditions, rates and charges applicable to such case for the carriage or warehousing of goods by the rail carrier or for any other service or facility and such conditions, rates and charges shall have immediate effect in relation to such cases:</p> <p>Provided that—</p> <ul style="list-style-type: none">(a) such conditions, rates and charges shall, if they are of a continuing nature, be available to the public on request; and(b) the determination of such conditions, rates and charges shall not of itself constitute an undue preference. |
| <p>General right to have goods carried.</p> | <p>151.(1) Subject to this Act, any person who has tendered to an authorized employee the appropriate rates and charges, and has complied with the conditions upon which goods may be accepted for carriage by the rail carrier, shall be entitled to receive a document of receipt for such goods and to have such goods carried by the rail carrier in accordance with the conditions of carriage and except where:</p> <ul style="list-style-type: none">(i) any animal tendered for carriage appears to be suffering from any infectious or contagious disease;(ii) any animal tendered for carriage is wild or dangerous without necessary permits;(iii) any goods tendered for carriage are goods to which section 156 applies;(iv) any goods tendered for carriage exceed the maximum weight or dimension specified in the Tariff Book;(v) any goods tendered for carriage are insufficiently or inappropriately packed;(vi) the carriage of any goods would at any stage of the transit thereof be contrary to any law; or |

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| | <p>(vii) facilities for dealing with the goods tendered for carriage are not available at the place where such goods are tendered or at the place of destination or at any place en-route.</p> <p>(2) A rail carrier may accept such goods for carriage under subsection (1) where a person tendering satisfies special provisions dealing with the carriage of such goods.</p> |
| <p>Description, etc., of goods to be delivered.</p> | <p>152. 154. (1) The consignor of, or the person tendering, any goods to the rail carrier for carriage or warehousing and, on request by an authorized employee, the consignee of, or person receiving, any goods which have been carried or warehoused by the rail carrier, shall deliver to an authorized employee an account in writing signed by the consignor, person or consignee, as the case may be, containing such a description of the goods as may be sufficient to enable such employee to determine the rates and charges payable in respect of the carriage or warehousing thereof by the rail carrier.</p> <p>(2) Any authorized employee may, for the purpose of checking any account delivered under subsection (1), require such consignor, person or consignee, as the case may be, to permit him to examine such goods.</p> <p>(3) If such consignor, person or consignee fails to deliver the account referred to in subsection (1) or to permit such goods to be examined as required under subsection (2), an authorized employee may—</p> <p>(a) in respect of goods which are tendered to the rail carrier for carriage or warehousing, refuse to accept the goods for such carriage or warehousing unless in respect thereof a rate or charge not exceeding the highest rate or charge payable for any class of goods is paid; or</p> <p>(b) in respect of goods which have been carried by the rail carrier, refuse to deliver such goods unless in respect thereof a rate or charge not exceeding such highest rate or charge is paid.</p> |

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| | <p>(4) If, in respect of goods which have been carried or warehoused by the rail carrier, an account delivered under subsection (1) is found to be false in any material particular with respect to the description of any goods to which it purports to relate, an authorized employee may refuse to deliver such goods unless, in respect of the carriage or warehousing of the goods, a rate or charge not exceeding double the highest rate or charge payable for any class of goods is paid.</p> |
| <p>Goods may be sold to pay fares, rates, etc.</p> <p>Cap 526</p> | <p>153. (1) Where any person fails to pay on demand made by an authorized employee any fare, rate or charge due from the person or in respect of any goods, the rail carrier may detain the whole or any part of such goods including the luggage of the person or, if the value of the goods is, in the opinion of the authorized employee insufficient to pay for the rate or charge due or if they have been removed from the possession of the rail carrier, any other goods of such person which may be in, or may thereafter come into, the possession of the rail carrier.</p> <p>(2) Where any goods have been detained under subsection (1), the rail carrier may, if the fare, rate or charge due is not sooner paid, sell by public auction sufficient of such goods to produce the fare, rate or charge so owing and all the expenses of such detention and sale; and in the case of—</p> <ul style="list-style-type: none">(a) perishable goods, such auction may take place as soon as possible;(b) any other goods, such auction may take place on the expiration of at least fifteen days' notice, published in one or more local newspapers, of the intended auction in accordance with Auctioneers Act: <p>(3) Imported goods shall not be sold under this section until they have been cleared by the Kenya Revenue Authority in accordance with the relevant laws and in the case of perishable goods, the consignor shall be liable for the fare or charge where the sale is not made in time.</p> <p>(4) The rail carrier may, out of the proceeds of any sale effected under subsection (2), retain a sum equal to the fare or charge due and the expenses of the detention and sale and shall deliver the balance, if any, of such proceeds together with such</p> |

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| | <p>of the goods, if any, as remain unsold to the person appearing to the rail carrier to be entitled thereto.</p> <p>(5) The rail carrier may, sell goods and dispose of the proceeds of such sale in accordance with provisions of this section, where a person fails, after notice so to do, to remove within a reasonable time, the goods, if any, remaining unsold.</p> <p>(6) Nothing in this section shall prejudice the right of the rail carrier to recover any such fare, rate or charge, or any part thereof, by any other lawful means.</p> |
| <p>Unclaimed goods in possession of the rail carrier</p> <p>Cap 526</p> | <p>154. (1) The rail carrier shall, where any goods in the possession of the rail carrier are not claimed by the owner or person appearing to the rail carrier to be entitled thereto, take all reasonable steps to cause a notice to be served upon the person requiring him or her to remove the goods.</p> <p>(2) Where—</p> <p>(a) the owner of any goods in the possession of the rail carrier is not known and no person appears to be entitled thereto;</p> <p>(b) the notice referred to in subsection (1) cannot for any reason be served; or</p> <p>(c) there has been a non-compliance with the provisions of any notice served under subsection (1),</p> <p>the rail carrier may, except in the case of perishable goods, as prescribed by the Auctioneers Act, sell the goods and retain the proceeds of the sale thereof.</p> <p>(3) Imported goods shall not be sold under this section until they have been cleared by the Kenya Revenue Authority in accordance with the relevant laws.</p> |
| <p>Indemnity where goods claimed by two persons, etc.</p> | <p>155.Where—</p> <p>(a) any goods, or the proceeds of the sale of any goods, are in the possession of the rail carrier and such goods or proceeds are claimed by two or more persons; or</p> |

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| | <p>(b) any person claiming any goods in the possession of the rail carrier does not produce valid documents showing that he is entitled to take delivery thereof,</p> <p>the rail carrier may withhold delivery of the goods or proceeds until the person appearing to the rail carrier to be entitled thereto has given an indemnity to his satisfaction against the claim of any other person with respect to such goods or proceeds.</p> |
| Offensive goods. | <p>156. (1) A person shall not take with him upon any train of the rail carrier or tender to the rail carrier for carriage or warehousing any offensive goods or any goods which are likely to cause damage to any persons or property without giving notice of the nature of such goods—</p> <p>(a) in the case of goods taken by a person, to the employee in charge of the station at which such person commences his journey; or</p> <p>(b) in the case of goods tendered to the rail carrier for carriage or warehousing, to the employee to whom the goods are tendered.</p> <p>(2) An authorized employee may—</p> <p>(a) refuse to permit any goods to which this section applies to be taken by any person upon any train of the rail carrier;</p> <p>(b) refuse to accept the goods for carriage or warehousing or accept them only under, and in accordance with, any special provisions dealing with the carriage or warehousing of any such goods;</p> <p>(c) require the goods to be marked and packed in such manner as he may reasonably direct.</p> <p>(3) Where an authorized employee has reason to believe that any goods to which this section applies are being carried or warehoused, or have been accepted for carriage or warehousing, in contravention of subsection (1) or (2) he may examine such goods and if, on examination, they are found to be goods to which this section applies he may order their removal from any train of, or from premises occupied by, the rail carrier.</p> |

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| | <p>(4) Nothing in this section shall—</p> <p>(a) derogate from the provisions of any law in force relating to the possession or transport of explosives, petroleum, firearms or ammunition;</p> <p>(b) apply to any goods carried by any member of any military force established for the defense of Kenya, or by any police officer, in the course of his duty.</p> <p>(5) For purposes of this section, “offensive goods” means carcasses of dead animals; bones excluding bleached and cleaned bones; waste or refuse; manures of any kind including mycelium except chemical manures; rags, other than oily rags; any decayed animal or vegetable matter; human ashes; human skeletons; parts of human body;</p> |
| <p>Quarantined goods.</p> | <p>157. (1) The quarantine of goods in transport shall be carried out in accordance with relevant regulations of the Government.</p> <p>(2) If an infectious disease which demands quarantine as stated in legal provisions is discovered in a railway station or on board a passenger train, the relevant government agency shall carry out the necessary quarantine process.</p> |
| <p>Carrier to determine maximum weight.</p> | <p>158. (1) The rail carrier shall determine—</p> <p>(a) the maximum load for every wagon of the operator and no wagon shall, except with the permission of the rail carrier, be loaded in excess of such maximum load;</p> <p>(b) the maximum number of passengers that may be carried in any compartment of a coach of a train or cabin of a vessel.</p> <p>(2) The rail carrier shall cause the maximum load determined under subsection (1) in respect of every wagon to be shown in a conspicuous manner on each wagon.</p> |
| <p>Counterfeiting and reselling of tickets</p> | <p>159. (1) Counterfeiting or alterations of tickets or other certificates which are printed and used in relation to passenger and goods transported by railways is prohibited.</p> |

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| | <p>(2) Reselling of passenger tickets or other railway transport certificates for profit is prohibited.</p> <p>(3) Any person who contravenes this Section commits an offence.</p> |
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| Rail carrier to prepare Tariff Book, etc | <p>160. The rail carrier shall cause to be prepared and published in such manner as it may deem fit—</p> <p>(a) a Tariff Book containing all matters which under this Act are required to be contained therein together with such other matters as, under this Act, may be determined by the rail carrier and such other matters as the rail carrier may deem fit;</p> <p>(b) such other books, time-tables and documents as under this Act are required to be kept.</p> <p>(2) There shall be available for public inspection at every booking office—</p> <p>(a) a copy of the Tariff Book containing all amendments for the time being in force;</p> <p>(b) a list specifying the fares for the carriage of passengers by the rail carrier from the place at which the list is kept to every other place to which bookings are commonly made; and</p> <p>(c) a time-table of the passenger transport services operated by the rail carrier.</p> |
| Military Transport on Railway | <p>161. Military transport on railways shall be handled in accordance with relevant provisions laid down by the relevant laws.</p> |
| | Chapter IV - Reporting Of Accidents Or Incidents |
| Duty to notify the Authority, Cabinet Secretary, etc. of serious railway accidents. | <p>162.(1) The operator, whose property or staff have been involved in a serious railway accident shall notify the Cabinet Secretary, the Authority and the body responsible for serious accident and incidents investigations of its occurrence immediately on learning of the occurrence and by the quickest means available.</p> |

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| | <p>(2) An infrastructure manager, whose property or staff have been involved in a serious railway accident shall notify the Cabinet Secretary, the Authority and the body responsible for serious accident and incidents investigations, of its occurrence immediately on learning of the occurrence and by the quickest means available.</p> <p>(3) Despite subsection (1) and (2) the train operator, shall additionally notify, the infrastructure manager.</p> |
| <p>Quarterly Railway accident and incident report</p> | <p>163.(1) A train operator and infrastructure manager whose property or staff have been involved in an accident or incident, shall submit quarterly reports to the Authority of its occurrence as applicable.</p> <p>(2) The Authority shall submit to the Cabinet Secretary a report on reported accidents and incidents periodically.</p> |
| <p>Information to be provided in the notification and report.</p> | <p>164. (1) A notification or report given under section 162 or 163 shall contain as much of the prescribed information relating to the accident or incident as the infrastructure manager, or the train operator is reasonably able to provide at the time of the notification.</p> <p>(2) The Cabinet Secretary shall make regulations for the proper implementation of notification and reporting of accidents and incidents.</p> |
| <p>Inquiries into serious railway accidents or incidents.</p> | <p>165. (1) Upon the occurrence of a serious railway accident or incident, the body responsible for accident investigation shall conduct an inquiry into the matter, and report the findings of the inquiry to the Cabinet Secretary in the prescribed manner and within 30 days or such period as provided.</p> <p>(2) The body responsible for accident investigation shall make public the accident report.</p> <p>(3) Upon occurrence of serious railway accident or serious incident, the infrastructure manager and train operators shall take all necessary measures to restore normal operations without unnecessary interference of the accident scene.</p> <p>(4) Nothing in this Section shall limit the Authority, infrastructure manager and train operator from conducting railway accident investigations.</p> |

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| <p>Inquiries into other railway accidents or incidents.</p> | <p>166.(1) Where the body responsible for accident investigation considers that any accident or incident associated with the operation of rolling stock on a railway, other than in relation to a serious railway accident, raises, or may raise, issues of public interest relating to safe railway operations, may, conduct an inquiry into the matter, and shall prepare a report the findings of the inquiry to Cabinet Secretary in the prescribed manner and within 30 days or such period as may be directed.</p> <p>(2) The Cabinet Secretary shall make public the accident or incident report submitted to him pursuant to subsection (1).</p> |
| | <p>PART VII – OFFENCES</p> |
| | <p>Chapter 1 - Major offences</p> |
| <p>Obstructing railway operations</p> | <p>167. (1) Any person who unlawfully—</p> <ul style="list-style-type: none"> (a) does any act which obstructs, or might obstruct, the working of a train or vehicle of the operator; or (b) damages or in any way interferes with any train, vehicle, signal, points, rails, sleeper, lighthouse, buoy, mark, beacon or other property of the rail operator, (c) does any act which interferes with rail operations and is not specifically provided under this act; (d) without authorization handles railway materials, Transports or causes unauthorized transportation of railway materials <p>commits an offence and is liable to imprisonment for a term not exceeding 10 years.</p> <p>(2) Without prejudice to the generality of subsection (1) any person who, being a member of the crew of train with prejudice to the safe operation of such train, without lawful excuse disobeys any lawful order given to him as a member of the crew, unlawfully deserts his employment upon such train shall be guilty of an offence and liable to imprisonment for a term not exceeding 10 years.</p> |

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| <p>Endangering lives at a level crossing</p> | <p>168. (1)A person who constructs a road across an existing railway line or constructs a railway line across an existing road and fails to:</p> <ul style="list-style-type: none">(a) seek approval from the Authority and concurrence from infrastructure manager in case of a road or the relevant road agency in-case of rail.(b) put in place all the necessary safety measures ascribed by the Authority.(c) put in place measures to ensure that a train has a right of way at all times, or;(d) comply with the measures put in place; <p>(2) (a)A person who contravenes paragraph (a), (b) or (c) shall be guilty of an offence and shall be liable upon conviction to a fine of one hundred million or twice the value of construction costs of a grade separated crossing whichever is higher or imprisonment for a term not exceeding 10 years or to both.</p> <p>(b)A person who contravenes paragraph (d) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.</p> |
| <p>Endangering life of passengers</p> | <p>169. Any person who—</p> <ul style="list-style-type: none">(a) carries any dangerous article into a railway station or on board a train or has consigned for shipment any dangerous article under a name of a non-dangerous article thus likely to cause an accident including explosive substances, illegal firearm, bullets, or controlled knives into a railway station or on board a train;(b) intentionally damages or destroys, vandalizes or causes to move or shift any railway signaling installation, or places on the railway track obstacle that might lead to the derailment or capsizement of a train;(c) steals spare part or component of a train operation facility installed on a railway line or equipment or material attached to a railway line, thus endangering safe operation of the train;(d) interferes with train control systems, train control center in a manner likely to endanger lives; |

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| | <p>(e) unlawfully does any act which endangers or might endanger the life of any person travelling thereon and which is not specifically provided under this act, commits an offence and shall be liable upon conviction, to imprisonment for life .</p> |
| <p>Forfeiture of railway materials.</p> | <p>170. (1) Where a person is charged with an offence of damaging or removing rail material, the rail material may upon application to the court returned to the owner.</p> <p>(2) The court may in addition to any other ruling order—</p> <p>(a) a person who is convicted of an offence to pay to the railway owner, by way of compensation, a sum equal to the determined value of the rail material so damaged including the cost of replacement of the rail material so damaged or removed plus the contingent liability likely to emanate from the act, in any case the person shall be liable to a fine not exceeding one million shillings for each offence upon conviction:</p> <p>(b) if it is proved to the satisfaction of the court that the person so charged is the agent or employee of another person, that other person to pay by way of compensation to the rail owner, the value of the rail material, unless after hearing that other person, the court is satisfied that the offence was not due to his negligence or default;</p> <p>(c) subject to paragraph (a) and (b) the value of the rail material shall be either the commercial value of the railway material or the cost of restoring the damage caused to rail as a result of the offence committed, whichever is higher.</p> <p>(3) The vehicles, tools or implements used in the commission of an offence under this section, shall be forfeited to the State.</p> |
| | <p>Chapter II - Minor offences</p> |
| <p>Minor offences.</p> | <p>171. Any person who—</p> <p>(a) not being specifically authorized in that behalf or an employee, passenger or agent of an operator—</p> |

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| | <ul style="list-style-type: none">(i) Without justifiable cause is found within any designated critical operational facilities and premises occupied by an operator or infrastructure manager;(ii) refuses to leave premises occupied by an operator, or any train or vehicle thereof after being lawfully warned to do so by any employee or police officer; <p>(b) being on any premises occupied by an operator or upon any train or vehicle of the operator —</p> <ul style="list-style-type: none">(i) refuses when called upon by an employee or police officer to give his name and address or gives a false name or address for the purpose of avoiding prosecution;(ii) is in a state of intoxication or behaves in a violent, or aggressive manner to the annoyance of any other person;(iii) discharges any firearm or does anything which may cause injury to any person on such premises or upon such train or vehicle;(iv) commits any nuisance or act of indecency or uses profane, obscene, indecent or abusive language;(v) without lawful excuse contravenes any direction lawfully given by any employee under this Act;(vi) save with the express permission of the operator or infrastructure manager hawks, sells or exposes for sale any article or touts, applies for or solicits custom of any description; or(vii) smokes in any non-designated area; <p>(c) writes, draws or affixes any profane, obscene, indecent or abusive word, matter, representation or character upon any premises occupied by an operator or upon any train or vehicle of an operator;</p> |
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- (d) defaces the writing on any board or any notice authorized to be maintained upon any premises occupied by an operator or upon any train or vehicle of the operator;
- (e) damages or without lawful excuse interferes with any property of an operator;
- (f) without lawful excuse does any act which obstructs, or is likely to obstruct, the free movement of train or rolling stock or therein;
- (g) without lawful excuse enters or leaves any train or vehicle of an operator while it is in motion or elsewhere than at the place appointed by an operator for passengers to enter or leave or opens any outer door of any train while it is in motion;
- (h) being a driver or conductor of any vehicle, disobeys while at a level crossing or railway premises occupied by an operator, any reasonable directions given to him in respect of such vehicle by any police officer or, not being an employee of the operator or infrastructure manager, disobeys any such direction given by an authorized employee;
- (i) knowing, or having reason to believe, that a train is approaching, or without having exercised due care to ascertain whether a train is approaching, opens any gate, chain or bar set up on either side of a railway or drives any animal, vehicle or other thing onto or across such railway;
- (j) uses any object including electronic gadgets (such as cameras, phones or earphones) or equipment on a designated station areas or railway infrastructure that is likely to interfere with the safety of passengers;
- (k) permits or allows any animal to stay on any premises occupied by an operator and properly fenced;
- (l) fails to deliver at the earliest possible opportunity to any authorized employee any property which there is reason to believe has been lost

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| | <p>or forgotten and is found in your possession while on any premises, train or vehicle of an operator or infrastructure manager;</p> <p>(m) willfully obstructs or impedes an employee of an operator in the discharge of his duties;</p> <p>(n) gives or offers to any employee any money or anything of value for the purpose of avoiding payment of any sum due to an operator;</p> <p>(o) unlawfully removes any property of an operator;</p> <p>(p) being an employee of an operator receives from any passenger or from any person delivering goods for an operator, any amount of money and—</p> <p>(i) in the case of any amount of money received as a passenger fare, fails to issue a ticket immediately in respect of such amount of money; and</p> <p>(ii) in any other case, fails within reasonable time not exceeding half an hour to issue a receipt in respect of such amount of money;</p> <p>(q) without the permission of an authorized employee travels in or upon any part of a train or vehicle of a train operator other than the part ordinarily provided for passengers during travel; or</p> <p>(r) contravenes any direction given by an Authorized officer under section 145 or refuses to answer any question put to him under the provisions of that section or gives in reply thereto any information which is false in a material particular,</p> <p>commits an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or to both.</p> |
| Travelling without a ticket. Etc. | 172. Any person who— |

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| | <p>(1) (a) travels on a train or vehicle of an operator without a valid ticket or free pass with intent to avoid payment of any fare for which he is liable;</p> <p>(a) having a valid ticket or free pass for a certain distance, knowingly travels on a train or vehicle of an operator beyond that distance with intent to avoid payment of the fare for the additional distance;</p> <p>(b) travels on a train or vehicle of an operator by a higher class than the valid ticket or free pass which he holds entitles him to travel with intent to avoid payment of any additional fare;</p> <p>(c) willfully refuses to pay on demand the fare and excess charge which he is liable to pay under section 148(3); or</p> <p>(d) travels on a train or vehicle of an operator with a ticket or free pass, or any portion thereof, purchased or obtained by him from any person other than an authorized employee,</p> <p>shall be guilty of an offence and liable to a fine not exceeding twice the value of the ticket or to imprisonment for a term not exceeding three months or to both.</p> <p>(2) Where any penalty imposed under this section is recovered, the amount thereof shall be paid to the operator.</p> <p>(3) Nothing in this section shall prejudice the right of the operator to recover any amounts due from the offender by any other lawful means.</p> |
| Offences by passengers. | <p>173. Any person who, being a passenger on a train or vehicle of an operator—</p> <p>(a) enters any part thereof reserved for use of another person, or already containing the maximum number of persons authorized for that part, and refuses to leave that part after being required to do so by an authorized employee;</p> <p>(b) resists or obstructs the lawful entry of a person into any part thereof not already containing the maximum number of persons authorized for that part;</p> <p>(c) refuses or fails to obey the requirement of an authorized employee, knowingly enters or refuses to leave any part thereof not intended for the use of passengers;</p> |

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| | <p>(d) without reasonable cause uses or interferes with any means of communication provided thereon for communication between passengers and any employee therein;</p> <p>(e) knowingly enters, or refuses to leave after being required so to do, any part thereof provided for the exclusive use of designated persons; or</p> <p>(f) surfs on a train while in motion,</p> <p>commits an offence and is liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding three months or to both.</p> |
| Forgeries etc. of tickets | <p>174. Any person who—</p> <p>(a) sells a fake or counterfeit ticket with the intention of the ticket being used for travel;</p> <p>(b) willfully alters, obliterates or defaces any ticket or free pass with intent to render any material portion thereof illegible with intent to use the ticket for travel,</p> <p>(c) obtains by false pretences or other fraudulent means any ticket or free pass issued by the operator;</p> <p>(e) with intent to defraud, counterfeits, forges or alters any such ticket or free pass; or</p> <p>(f) with intent to defraud, utters or in any way publishes any such forged, counterfeited or altered ticket or free pass,</p> <p>shall be guilty of an offence and liable to a fine not exceeding one hundred thousand or imprisonment for a term not exceeding three years or to both.</p> |
| False returns | <p>175. Any person who makes, either knowingly or recklessly, any return, claim or other document which is required or authorized to be made for the purposes of the operator under this Act which may result to a loss to the operator or compromise safety shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment a term not exceeding three years or to both.</p> |

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| <p>Unlawfully transporting dangerous goods</p> | <p>176. Any person, who in contravention of the provisions on transportation of dangerous goods—</p> <p>(a) takes with him any goods to which that section applies upon any train, vessel or vehicle of the operator; or</p> <p>(b) delivers any such goods to the operator for carriage or warehousing,</p> <p>shall be guilty of an offence and liable to a fine not exceeding one million shilling or twice the value of the goods whichever is higher or to imprisonment for a term not exceeding five years or to both.</p> <p>(2) Any person who is convicted of an offence under this section shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so taken upon the train, vessel or vehicle or delivered to the operator for carriage or warehousing; and the court which convicts such offender may order him to pay the amount of any such loss, injury or damage to the person suffering it and in default of such payment may impose a further term of imprisonment not exceeding one year.</p> |
| <p>Employee endangering safety of operations</p> | <p>177. Any employee of the infrastructure manager or operator who, while on duty, endangers the safety of any person—</p> <p>(a) by contravening any of the provisions of this Act;</p> <p>(b) by contravening any lawful order, direction or rule given to such employee made in respect of his service;</p> <p>(c) by being under the influence of alcohol or abuse of substance; or</p> <p>(d) by any rash or negligent act,</p> <p>shall be guilty of an offence and liable upon conviction to payment of a fine not exceeding one hundred thousand or an term of imprisonment for a term not exceeding three years or to both.</p> |
| <p>Employee demanding improper amount.</p> | <p>178. Any employee of the operator, who with intent to defraud, demands, solicits or receives from any person delivering goods to the operator for carriage or warehousing or from any person making use of the facilities provided by the operator, any greater or lesser amount than he should demand or receive, or any other thing of value, shall be guilty of an offence and liable upon conviction for a fine not exceeding five million shillings, or to imprisonment for a term not exceeding ten years, or to both.</p> |

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| <p>Power of arrest, removal and the place of trial</p> | <p>179.(1) Any person who commits any offence in this Act may be arrested without warrant by any authorized employee of the operator or police officer and shall thereupon, within twenty four hours, be taken before a court having jurisdiction to try him or to commit him for trial.</p> <p>(2) Any person who commits any offence against this Act, other than an offence mentioned in subsection (1), may be arrested without warrant by any authorized employee of the operator or police officer if—</p> <p>(a) there is reason to believe that such person will abscond; or</p> <p>(b) he refuses on demand to give his name and address; or</p> <p>(c) there is reason to believe that the name or address given by him is incorrect, and shall thereupon, within twenty four hours, be taken before a court :</p> <p>(3) Any person who commits any of the offences set out in the Act may be required by any authorized employee of the operator or police officer to leave the premises occupied by the operator or the train, vessel or vehicle, as the case may be, in which such person is at the time of the commission of the offence and to remove any goods therefrom; and if such person fails to comply with such requirement such person or such goods may be removed therefrom with such force as may be reasonably necessary in the circumstances.</p> <p>(4) Any person who, under this section, is arrested or required to leave any premises occupied by the operator or any train, vessel or vehicle thereof shall not be entitled to the return of any fare which he may have paid.</p> |
| <p>Encroachment on railway land.</p> | <p>180. A person who encroaches on railway land shall be guilty of an offence.</p> <p>In case of soft encroachment the operator shall be entitle to remove the encroachment and shall not compensate or incur any cost for compensation or otherwise and any damage to the property shall be borne by the person who has encroached.</p> <p>In case of hard encroachment where the intention is to take possession or claim ownership of the land which would result in loss of title or of benefits to the operator or infrastructure manager, the person who has encroached shall be guilty of an offence and shall be liable on conviction liable to a fine not exceeding twenty million shilling or imprisonment for 10 years or both.</p> |

| PART VIII – REGULATIONS, TRANSITIONAL PROVISIONS AND REPEALS | |
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| Regulations. | <p>181. (1) The Cabinet Secretary may make regulations generally with respect to the services performed and the functions provided for under this Act.</p> <p>(2) Despite the generality subsection (1), the Cabinet Secretary may make regulations with respect to—</p> <ul style="list-style-type: none">(a) maintenance of order on any premises occupied by the operator or infrastructure manager or in any inland waterways providing a link between two rail networks or any train, vessel or vehicle of the operator or infrastructure manager;(b) the proper control, management and protection of any such premises, train, vessel or vehicle and any property of the operator or infrastructure manager;(c) the liability insurance coverage requirements for the purpose of section 75(2) (d)(d) the financial fitness requirements for the purpose of section 75 (2)(e);(e) the professional competence requirements for the purpose of section 75 (2)(g);(f) the information to be provided in the notice given under section 164(2)(g) forms and fees;(h) conditions and amounts by which a rail carrier may limit its liability under this Act;(i) investigation and reporting of railway accidents and incidents;(j) procedure by which the Authority shall certify—<ul style="list-style-type: none">(i). infrastructure and rolling stock;(ii). personnel undertaking safety functions for railways; and(iii). training programmes for safety critical workers. |

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| Savings and transitional provisions. | <p>182. (1) A person operating rolling stock on a railway on the day of the coming into force of this Act shall be entitled to continue with the operation for a period of twelve months before being bound by section 75.</p> <p>(2) The Corporation shall take over and assume all the obligations, debts, liabilities, civil suits of the former Kenya Railways Corporation.</p> <p>(3) All the funds, assets and other property movable and immovable which immediately before that day, were held for and on behalf of the Kenya Railways Corporation shall, by virtue of this paragraph and without further assurance, vest in the Corporation.</p> <p>(4) The Cabinet Secretary shall make temporary arrangements for the licensing of operators under the provisions of section 74 to 82 of this Act until operationalization of the Authority, which shall not be later than one year from the date of coming into force of this Act.</p> |
| Repeal. | 183. The Kenya Railways Corporation Act (Cap. 397) is hereby repealed. |
| Commencement date. | 184. This Act or sections thereof shall come into force on such day or days appointed by the Cabinet Secretary for the time being responsible for railways by notice published in the Gazette. |
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| | FIRST SCHEDULE [section 99] |
| | <p>SERVICES OFFERED BY THE CORPORATION TO TRAIN OPERATORS</p> <p>1. The minimum access package shall comprise—</p> <ul style="list-style-type: none"> (a) handling of requests for infrastructure capacity; (b) the right to use the capacity which is granted; (c) use of running track points and junctions; (d) train control including signaling, regulation, dispatching and the communication and provision of information on train movement; and |

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| | <p>(e) all other information required to implement or operate the service for which capacity has been granted.</p> <p>2. Track access to services facilities and supply of services shall comprise—</p> <ul style="list-style-type: none">(a) use of electrical supply equipment for traction current, where available;(b) refueling facilities;(c) passenger stations, their buildings and other facilities;(d) freight terminals;(e) marshaling yards;(f) train formation facilities;(g) storage sidings; and(h) maintenance and other technical facilities. <p>3. Additional services may comprise—</p> <ul style="list-style-type: none">(a) traction current;(b) supply of fuel, shunting, and all other services provided at the access services facilities mentioned above; and(c) tailor-made contracts for—<ul style="list-style-type: none">(i) control of transport of dangerous goods; and(ii) assistance in running abnormal trains. <p>4. Ancillary services may comprise—</p> <ul style="list-style-type: none">(a) access to telecommunication network;(b) provision of supplementary information; and(c) technical inspection of rolling stock. |
| | <p>SECOND SCHEDULE [section 8 (6) and 67]</p> <p>Provisions as to the conduct of business and affairs of the Boards of the Corporation and the Authority.</p> |

Meetings

1. The Board shall meet for the dispatch of business at such times and places as it shall appoint, or failing any such appointment, as the chairperson shall appoint:

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

Notice of meetings

2. The chairperson or any three directors may, by not less than twenty-four hours written notice to all other directors, summon a special meeting of the Board at the headquarters of the Corporation at any time.

Special meetings

3. Except where a shorter period is appointed under paragraphs 4 or 5, notice of the date, time and place of each meeting shall be given in writing at least five clear days beforehand to every director at such address in Kenya as he shall have notified to the Corporation from time to time:

Provided that the failure of any director to receive such notice shall not invalidate any proceedings.

Quorum

4. The quorum necessary for the transaction of business by the Board shall be two-thirds.

Chairperson

5. The chairperson shall preside at meetings of the Board.

6. Where the Chairperson present at the start or at any time during a meeting, the directors present, if a quorum, may choose one of their number, other than the managing director, to act as chairperson during the chairperson's absence from that meeting.

Voting

7. Questions arising at meetings shall be decided by a majority of the votes of the directors present and voting:

Provided that in the case of any equality of votes, the chairperson of the meeting shall have a second or casting vote.

Minutes

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

Other procedures

9. Subject to this Schedule, the Board may determine its own procedure, and the procedure for any committee of the Board and for the attendance of other persons at its meetings, and may make standing orders in respect thereof.

Disclosure of interest

10. If a director is directly or indirectly interested in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or other matter, or be counted in the quorum of the meeting during the consideration of that matter. A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

Common seal

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

Contracts and instruments

11. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Corporation by any person generally or specially authorized by it for that purpose.

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| | <p>Proof of documents</p> <p>12. Any document purporting to be a document duly executed or issued under the seal of the Corporation or on behalf of the Corporation shall be received in evidence and be deemed to be a document so executed or issued without further proof unless the contrary is shown.</p> |
| | <p>THIRD SCHEDULE [Section 114 and 115]</p> |
| <p>Safety Management System.</p> | <p>SAFETY MANAGEMENT SYSTEM</p> <p>1. Requirements on the safety management system</p> <p>The safety management system shall—</p> <ul style="list-style-type: none"> (a) describe the distribution of responsibilities, within the operation, for the safety management system; (b) show how control of the safety management system by the management on different levels is secured; (c) show how persons carrying out work or voluntary work directly in relation to the operation and their representatives on all levels are involved with the safety management system; (d) show how continuous improvement of the safety management system is ensured; and (e) contain a statement on compliance with environmental requirements from the countries where the operations are undertaken. <p>2. Basic elements of the safety management system</p> <p>The basic elements of a safety management system are—</p> <ul style="list-style-type: none"> (a) a statement of the safety policy which has been approved by the chief executive and communicated to all persons carrying out work or voluntary work directly in relation to the operation; |

(b) qualitative and quantitative targets for the maintenance and enhancement of safety and plans and procedures for reaching those targets;

(c) in relation to the Kenya railways network, a provision that the procedures to meet relevant technical and operational standards or other requirements as set out in the—

(i) safety rules; and

(ii) decisions of the Authority addressed to the train operator in question, and procedures to ensure compliance with the requirements listed in this paragraph throughout the life-cycle of any relevant equipment or operation which is subject to the requirement in question;

(d) in relation to private railway line provision that it—

(i) meets relevant technical specifications; and

(ii) there are procedures for operations or maintenance,

insofar as they relate to the safety of persons, and procedures for ensuring that the procedures in sub-paragraphs (i) and (ii) are followed throughout the life-cycle of any relevant equipment or operation;

(e) procedures and methods for carrying out risk evaluation and implementing risk control measures when—

(i) there is a change in the way in which the operation in question is carried out; or

(ii) new material is used in the operation in question,

which gives rise to new risks in relation to any infrastructure or the operation being carried out;

(f) provision of programs for training of persons carrying out work or voluntary work directly in relation to the operation and systems to ensure that the competence of such persons is maintained and that they carry out tasks accordingly;

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| | <p>(g) arrangements for the provision of sufficient information relevant to safety—</p> <ul style="list-style-type: none">(i) within the operation in question; and(ii) between the operator in question and any other transport operator or an applicant for a safety certificate or a safety authorization who carries out or who intends to carry out operations on the same infrastructure; <p>(h) procedures and formats for the documentation of safety information;</p> <p>(i) procedures to control the layout of, and changes to, vital safety information;</p> <p>(j) procedures to ensure that accidents, incidents, near misses and other dangerous occurrences are reported, investigated and analyzed and that necessary preventative measures are taken;</p> <p>(k) provision of plans for action, alerts and information in the case of an emergency which are to be agreed with any public body, including the emergency services, that may be involved in such an emergency; and</p> <p>(l) provisions for recurrent internal auditing of the safety management system.</p> |
| | FOURTH SCHEDULE [section 116] |
| | APPLICATION FOR A SAFETY CERTIFICATE |
| | PART 1 |
| | Information to be included for a Kenya Railway Network Application |
| | <p>(a) particulars of the type and extent of the operation in respect of which the application is made; and</p> <p>(b) either—</p> <ul style="list-style-type: none">(i) a copy of a current certificate issued to the applicant by the Authority; or(ii) particulars of how the safety management system of the applicant meets the requirements set out in section 4(1). <p>(c) information on the safety rules and an explanation of how compliance with these safety rules is ensured by the safety management system;</p> <p>(d) information on the different types of work being carried out by persons directly in relation to the operation including evidence of how the applicant ensures that</p> |

when such persons are carrying out such work that they are doing so in accordance with the requirements of any relevant safety rules; and

(e) information on the different types of rolling stock used for the operation in question including evidence that they meet any relevant safety rules.

PART 2

INFORMATION TO BE INCLUDED FOR A RAILWAY LINE APPLICATION

1. Particulars of the type and extent of the operation in respect of which the application is made.
2. Particulars of how the safety management system of the applicant meets the requirements set out in section 5.
3. Information on the—
 - (a) relevant safety rules which are applicable to the operation; and
 - (b) technical specifications and procedures relating to operations and maintenance that are relevant to the safety of the transport system which the applicant proposes to follow, and an explanation of how compliance with these requirements is ensured by the safety management system.
4. Information on the different types of work or voluntary work being carried out by persons directly in relation to the operation including evidence of how the applicant ensures that when such persons are carrying out work or voluntary work in relation to the operation that they are doing so in accordance with relevant requirements of the relevant statutory provisions referred to in paragraph 8(a).
5. Information on the different types of rolling stock used for the operation including evidence that they meet relevant requirements of the relevant statutory provisions referred to in paragraph 8(a).

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The proposed object of the Railway Bill, 2024 is to provide for the establishment of Kenya Railways Corporation, to establish the Railway Regulatory Authority as the railway economic and safety regulator; to provide for open access, to make provision for infrastructure managers and train operators and for connected purposes.

Part I (Clause 1 to 4) provides for preliminary matters including the short title, interpretation of the proposed bill, the objects and purposes of the proposed Bill.

Part II (Clause 5 to 51) provides for establishment of the Kenya Railways Corporation, its functions, powers, composition of the Board and functions of the Board of Directors. It provides for the appointment of the Managing Director, his or her duties and responsibilities. It also provides for the funds of the corporation and appointment of staff of the Corporation. It establishes the Railway Training Institute as a training institute in the railway industry.

Part III (Clause 52-103) it provides for establishment of the Railway Regulatory Authority, its functions and management. It provides the Authority's Board of Directors, the qualifications of its Board of Directors and grounds for removal from office and vacation of office. It further provides for sources of the Authority's funds, audit of its books and report of activities undertaken in a given financial year. It further provides for licensing of operators within the Kenya Railway Network, classes of licenses, duration of the licenses, conditions and variation of the licenses, renewal and eligibility criteria for issuance of a railway operating license. This part further provides for allocation of infrastructure capacity on the Kenya Railway Network and criteria for setting infrastructure access charges.

Part IV (Clause 104-111) provides for approvals required in the construction of a railway line and accommodation works as well as operation of a private railway line. It further provides for classes of licenses for the operation of a private railway line.

Part V (Clause 112- 132) provides for safety management system for both the Kenya Railways Network and the private railway line. It further provides for the safety certificate and safety authorization and general powers of search and inspection of the Authority. It further provides for dispute resolution channels through establishment of the railway appeals board and appeals processes.

Part VI (Clause 133- 166) provides for responsibility of railway carriers during carriage of passengers and goods and extent of liability for loss of life or goods during transit. It further provides for limitation of liability of rail carriers and general rights of passengers. It further provides for **conditions** for carriage of passengers and luggage and creates the offences of counterfeiting and reselling of tickets. It further provides for reporting of accidents and the information to be provided in an accident notification report.

Part VII (Clause 167-180) provides for the major and minor offences under the Bill.

Part VIII (Clause 181-184) provides for the powers of the Cabinet Secretary to make regulations, savings and transition provisions and the repeals the Kenya Railways Corporation Act, CAP 397 laws of Kenya. It further provides for the commencement date of the proposed Bill.

The First Schedule of the Bill provides services offered by the Corporation to train operators.

The Second Schedule of the Bill provides for conduct of business and affairs of the boards of the Corporation and the Authority.

The Third Schedule of the Bill provides for basic elements and requirements of the safety management system.

The Forth Schedule of the Bill provides for information to be included in application for a safety certificate for both Kenya Railways Network and private railway line.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill delegates legislative powers to the Cabinet Secretary but it does not limit fundamental rights and freedoms.

Statement on whether the Bill concerns County Governments

The Bill does not concern county governments in terms of Article 110(l)(a) of the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

This Bill is a money Bill within the meaning of Article 114 of the Constitution.