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OF THE REPUBLIC OF SOUTH AFRICA

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 428.

15 March 1989

No. 428.

15 Maart 1989

It is hereby notified that the acting State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die waarnemende Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 9 of 1989: Legal Succession to the South African Transport Services Act, 1989.

No. 9 van 1989: Wet op die Regsopvolging van die Suid-Afrikaanse Vervoerdienste, 1989.

Act No. 9, 1989 LEGAL SUCCESSION TO THE SOUTH AFRICAN TRANSPORT SERVICES ACT, 1989

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with solid line indicate insertions in existing enactments.

ACT

To make provision for the formation of a company, for the legal succession to the South African Transport Services by the Company, for the establishment of the South African Rail Commuter Corporation Limited and for related matters.

*(English text signed by the acting State President.)
(Assented to 1 March 1989.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF ACT

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INTERPRETATION

Definitions 15

1. In this Act and in the Schedules thereto, unless the context indicates otherwise,—

- (i) "Auditor-General" means the person referred to in section 41 of the Exchequer and Audit Act, 1975;
- (ii) "Company" means the company referred to in section 2; 20
- (iii) "Corporation" means the South African Rail Commuter Corporation Limited established in terms of section 22;
- (iv) "Government" means the Government of the Republic of South Africa;
- (v) "Minister" means the Minister of Transport Affairs;
- (vi) "South African Transport Services" means the South African Transport Services referred to in section 2 of the South African Transport Services Act, 1981; 25
- (vii) "State" means the Republic of South Africa;
- (viii) "subsidiary" means, in relation to the Company, a subsidiary within the meaning given to that term in section 1 (3) of the Companies Act, 1973, 30 which definition shall also apply *mutatis mutandis* to a subsidiary of the Corporation as if the Corporation were a company as defined in the Companies Act, 1973; and
- (ix) "Transmed" means the medical scheme referred to in section 10.

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CHAPTER I

LEGAL SUCCESSION TO THE SOUTH AFRICAN TRANSPORT SERVICES

Formation of Company

2. (1) The Minister shall take the necessary action, due regard being had to the provisions of this section, for the formation and incorporation of a public company with share capital and the issuing of a certificate to commence business in terms of the Companies Act, 1973. 5

(2) The State shall, upon incorporation of the Company, be the only member and shareholder of the Company.

(3) The Minister shall on behalf of the State sign the memorandum of association, articles of association and all other documents necessary in connection with the formation and incorporation of the Company and he shall exercise the rights of the State as member and shareholder of the Company. 10

(4) Notwithstanding the provisions of section 32 of the Companies Act, 1973, the Registrar of Companies shall register the memorandum of association and articles of association of the Company and shall incorporate the Company as a public company with the State as the only member and shareholder thereof. 15

(5) In order to give effect to the provisions of this section, the Registrar of Companies shall issue such directives and authorise such deviations from the regulations promulgated in terms of the Companies Act, 1973, and the documents prescribed in terms thereof as he may consider necessary under the circumstances. 20

(6) The provisions of sections 66 and 344 (d) of the Companies Act, 1973, shall not apply to the Company while the State is the only beneficial member and shareholder thereof.

Transfer of Commercial Enterprise to Company

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3. (1) The Minister shall, within 12 months after compliance with section 2 (1), stipulate by notice in the *Gazette* a date upon which the Company shall become the successor to the South African Transport Services.

(2) On the date stipulated in terms of subsection (1) the whole of the commercial enterprise of the State as contemplated in section 3 (1) of the South African Transport Services Act, 1981, including all assets, liabilities, rights and obligations of whatever nature, with the exception of the assets referred to in section 25 (1), shall be transferred to the Company, which shall acquire such enterprise as a going concern. 30

(3) Arising out of the transfer of the commercial enterprise in terms of subsection (2) and without in any way derogating from the generality of the preceding provision— 35

(a) the Company shall become the owner of all movable and immovable property, with the exception of the assets referred to in section 25 (1), that, immediately prior to the date referred to in subsection (1)— 40

(i) was registered in the asset registers of the South African Transport Services; or

(ii) fell under the control and jurisdiction of the South African Transport Services or formed part of the South African Transport Services' jurisdiction as defined in section 1 of the South African Transport Services Act, 1981; or 45

(iii) was possessed, occupied or used by the South African Transport Services as if the South African Transport Services, the State, the State President or the Government were the owner thereof;

(b) all persons who, immediately prior to the date referred to in subsection (1), were in the employ of the South African Transport Services, shall be employees of the Company without any interruption in their service as if they had been in the employ of the Company from the beginning; 50

(c) the Company shall be substituted as litigating party for the South African Transport Services on the date referred to in subsection (1) in all pending litigation, including arbitrations, as if the Company had been the litigant from the beginning; 55

(d) the Company shall be substituted as contracting party for the South African Transport Services on the date referred to in subsection (1) in all contracts as if the Company had been the contracting party from the beginning; 60

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(e) it shall be deemed that all existing financial instruments of the South African Transport Services have been issued by the Company in terms of section 19.

(4) Subsection (3) (a) shall not be construed as conferring on the Company a right of ownership in movable or immovable property the right of ownership in which, immediately prior to the date referred to in subsection (1), was vested in a person other than the South African Transport Services, the State, the State President or the Government. 5

Issue of Shares to the State

4. (1) As consideration for the transfer of the commercial enterprise in terms of section 3 (2), fully paid-up shares in the Company shall be issued to the State.

(2) The value of the assets obtained by the Company in terms of section 3 shall be determined by the Minister in consultation with the Minister of Finance.

(3) For the purposes of the application of the Income Tax Act, 1962, or any other law falling under the administration of the Minister of Finance, it shall be deemed that expenses were actually incurred by the Company in the acquisition of the assets and that, notwithstanding any provision in any other law, the relevant expenses, including the cost of the assets, are equivalent to the value determined in terms of subsection (2). 15

(4) The total loan debt of the Company to the State, the permanent capital referred to in sections 27A to 27F of the Exchequer and Audit Act, 1975, and all permanent capital established in terms of any other law applicable to the South African Transport Services, shall be capitalised by the issue to the State of additional fully paid-up shares in the Company and any obligations in respect of interest associated with such loans and permanent capital shall lapse. 25

(5) The total value and number of—

(a) the shares issued by the Company to the State in terms of subsections (1) and (4); and

(b) the shares issued by the Corporation to the State in terms of section 25 (3), shall be determined by the Minister in consultation with the Minister of Finance. 30

References in Documents

5. (1) Subject to the provisions of subsections (2) and (3) and unless it is patently inapplicable in a particular case, any reference to the South African Transport Services, its predecessors or the General Manager thereof in any law, contract, a register or record created in terms of a statute, or other document shall, with effect from the date referred to in section 3 (1), be deemed to constitute a reference to the Company or the Managing Director thereof, respectively. 35

(2) Subsection (1) shall not apply to a provision in any law that, in terms of this Act, is amended, repealed or interpreted in a particular manner.

(3) The words "any reference to the South African Transport Services, its predecessors" in subsection (1) shall be construed as including any reference to the State where the latter reference in context includes a reference to the South African Transport Services or its predecessors. 40

CHAPTER II

OPERATING PROVISIONS

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Operating Provisions, Operating Powers and Offences

6. The provisions of Schedule 1 to this Act shall apply to the continuation and execution of the operations and services of the Company.

CHAPTER III

TRANSITIONAL PROVISIONS

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Exemption from being bound by Statute

7. The Company shall enjoy the same exemption from being bound by statute as was or would have been enjoyed by the South African Transport Services in respect

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of any activity undertaken by the South African Transport Services, including any building, construction or other work undertaken by the South African Transport Services or its predecessors, as well as in respect of the completion thereof.

Employees

8. For the purposes of the application of the Income Tax Act, 1962, it shall be deemed— 5

- (a) that the Company and the South African Transport Services are the same employer;
- (b) that no change of employer took place on the date referred to in section 3 (1); and 10
- (c) that the position of employees in respect of the phasing in of benefits or advantages derived by reason of employment or the holding of any office in terms of Schedule 7 of the Income Tax Act, 1962, shall remain unchanged.

Conditions of Service Act

9. (1) Any reference in the South African Transport Services Conditions of Service Act, 1988, to the General Manager or an employee of the South African Transport Services shall be construed as a reference to the Managing Director or an employee of the Company, respectively. 15

(2) Notwithstanding the provisions of this Act or any other law, an employee of the Company shall be deemed, for the purposes of the Labour Relations Act, 1956, to be a person in the employ of the State. 20

(3) Subsection (2) shall be repealed two years after the operative date of this Act.

(4) Paragraphs (a) and (b) of section 2 (1), the provisos to section 2 (1) (c) and the words "subject to such limitations as the Minister may impose," in section 2 (1) (d) of the South African Transport Services Conditions of Service Act, 1988, are 25 repealed.

(5) Section 15 (7) of the South African Transport Services Conditions of Service Act, 1988, is repealed and any reference to that provision in that Act shall cease to have effect.

(6) Subject to the provisions of subsections (7) and (8) as well as section 10 (1), the South African Transport Services Conditions of Service Act, 1988, shall be repealed two years after the operative date of this Act. 30

(7) The Company and its employees shall retain the rights and remain bound by the obligations that, immediately prior to the date on which the South African Transport Services Conditions of Service Act, 1988, is repealed, are contained, in terms of that Act, in the Consolidated Service Conditions and in decisions that are regarded as being equivalent to agreements of the Labour Council; provided that such rights and obligations shall continue in existence only until they are amended by or in accordance with a relevant statutory measure or an arbitration award, court judgment or agreement, in which event the ambit of the amendment shall be limited to the terms of such measure, award, judgment or agreement. 35 40

(8) (a) The assets, liabilities, rights and obligations of whatever nature of the Labour Council established in terms of the South African Transport Services Conditions of Service Act, 1988, which came into being after the operative date of that Act and which exist immediately prior to the date on which the said Act is repealed, shall be transferred to the Company on the latter date. 45

(b) Should the Company and four-fifths of all the Trade Union members of the Labour Council decide, before the above-mentioned Act is repealed, to establish an Industrial Council in terms of the Labour Relations Act, 1956, such transfer of assets, liabilities, rights and obligations from the Labour Council to the Company shall, however, be subject to the condition stipulated in paragraph (c) below. 50

(c) Should any such Industrial Council be established within a period of one year after the date on which the South African Transport Services 55

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Conditions of Service Act, 1988, is repealed, such assets, liabilities, rights and obligations shall be transferred from the Company to such Industrial Council.

Transmed

10. (1) The provisions of sections 24 and 25 of the South African Transport Services Conditions of Service Act, 1988, shall lapse on the date referred to in section 3 (1). 5

(2) The South African Railways and Harbours Sick Fund constituted in terms of regulations promulgated under section 32 (1) (g) of the Railways and Harbours Service Act, 1960, shall continue in existence as the Company's medical scheme under the name Transmed. 10

(3) The Company is hereby empowered to establish and manage dispensaries for the purposes of Transmed and existing dispensaries established for the purposes of the Sick Fund referred to in subsection (2) shall continue in existence as dispensaries of Transmed. 15

(4) The Minister of National Health and Population Development shall be consulted before any new dispensary is established in terms of subsection (3).

(5) No cession by a supplier of a service of any right to payment in respect of a service that has been or may be supplied by him to a member or beneficiary of Transmed shall be binding on the member or beneficiary concerned or Transmed. 20

(6) For the purpose of subsection (5) a "service" shall mean any benefit for which provision is made in the rules referred to in subsection (7).

(7) The Company may make rules not inconsistent with this Act in connection with Transmed and the management thereof.

(8) Any regulation promulgated in connection with the medical scheme and the management thereof in terms of a law repealed by this Act shall be deemed to constitute a rule made in terms of subsection (7). 25

(9) Transmed shall enjoy the same measure of freedom from being bound by statute as that which it enjoyed as the medical scheme of the South African Transport Services. 30

House Ownership Fund

11. (1) The South African Transport Services' House Ownership Fund referred to in section 72 of the South African Transport Services Act, 1981, is hereby terminated and all assets of the Fund shall, subject to the provisions of subsection (2), be transferred to the Company. 35

(2) Money paid by an employee of the South African Transport Services in terms of paragraph (a) of section 72 (3) of the South African Transport Services Act, 1981, shall be refunded to him by the Company as soon as possible together with such interest as may be payable in terms of that paragraph.

Insurance Fund

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12. The South African Transport Services' insurance fund referred to in section 9 (3) of the South African Transport Services Act, 1981, shall continue in existence as an insurance fund of the Company and the Company shall be endowed in regard to insurance with the same powers as the South African Transport Services.

Property Development

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13. (1) Subject to the provisions of subsection (2), the Company shall be entitled, up to a date three years after the date referred to in section 3 (1), to develop, cause to be developed, to use and to let its immovable property for any purpose, including the construction and exploitation of buildings and structures for commercial purposes, notwithstanding the fact that the immovable property concerned is either not zoned or is zoned or intended for other purposes in terms of an applicable township construction or development scheme, guide plan or statutory provision. 50

(2) Immovable property may be developed in terms of subsection (1) only—

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- (a) after an agreement has been reached with the local authority concerned; or
 - (b) should such agreement not be reached, in terms of permission granted by the Administrator of the province concerned subject to such conditions as he may consider appropriate; or
 - (c) should the development be in conflict with an approved guide plan, with the approval of the Administrator referred to in section 6A (12) of the Physical Planning Act, 1967. 5
- (3) The local authority—
- (a) with which an agreement is reached in terms of subsection (2) or with which an agreement was reached in terms of section 9 (26) of the South African Transport Services Act, 1981, prior to the operative date of this Act; or 10
 - (b) which exercises jurisdiction over property in respect of which permission or approval is obtained in terms of subsection (2) from the Administrator concerned, 10

shall record, in connection with the use of the immovable property agreed upon or in respect of which permission or approval is obtained in terms of subsection (2), a suitable zoning for such immovable property, whereafter such zoning shall be regarded as the zoning of the property for all purposes.

Catering Services

14. (1) (a) The Company may, notwithstanding the provisions of any other law, undertake the sale of refreshments (including liquor as defined in section 1 of the Liquor Act, 1977)—
- (i) in the Parliament Buildings;
 - (ii) on a passenger-carrying train, aircraft or luxury coach, together with any other merchandise that the Company may consider desirable; 25
 - (iii) at any airport approved by the Minister at the request of the Company to a person who operates a passenger air service, for consumption on board an aircraft, used in such service, by passengers while in flight; and
 - (iv) at any station approved by the Minister at the request of the Company to a person who operates a passenger rail service, for consumption on board a train, used in such service, by passengers while travelling. 30
- (b) The Company may, notwithstanding the provisions of any other law, and without derogating from the Company's powers to obtain any other licences and authorities, sell refreshments (including liquor as defined in section 1 of the Liquor Act, 1977) and merchandise at such places under its control at which the South African Transport Services sold refreshments and merchandise immediately before the date referred to in section 3 (1). 35
- (c) (i) The liquor licences and authorities, particulars of which shall be published by notice in the *Gazette* by the Minister prior to or on the date referred to in section 3 (1), shall be deemed to have been issued to and to be held by the Company in terms of the Liquor Act, 1977. 40
- (ii) The notice referred to in subparagraph (i) shall include the liquor licences and authorities in respect of the places or premises referred to in paragraphs (a) and (b). 45
- (d) Notwithstanding the provisions of the Liquor Act, 1977,—
- (i) the liquor licences or authorities referred to shall not be suspended or withdrawn by the appropriate authority merely on the ground that the place or premises involved do not comply with requirements of the Liquor Act, 1977, before the termination of a period of three years from the operative date of this Act or before the termination of such shorter period as the Minister, at the request of the Company, may stipulate by notice in the *Gazette*; and 50
 - (ii) a concession, which includes the right to sell liquor and which was granted in terms of section 52 (1) (c) (i) of the South African Transport Services Act, 1981, shall continue to have effect until the concession is terminated in terms of the provisions thereof. 55

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- (2) (a) Notwithstanding the provisions of sections 23 (1) and (9) of the Liquor Act, 1977, the Company shall be deemed to be the holder of a special authority in terms of section 23 of the said Act to sell liquor to its employees.
- (b) The special authority shall, with effect from the date referred in section 3 (1), be deemed to have been granted— 5
- (i) in respect of the premises identified by the Minister by notice in the *Gazette* before or on the date referred to in section 3 (1);
 - (ii) subject to the conditions stipulated in section 55 of the South African Transport Services Act, 1981, as if that section had been applicable to all employees; and 10
 - (iii) for a period of two years or such shorter period as the Minister may, at the request of the Company, stipulate by notice in the *Gazette*.
- (3) The Company shall pay the fee referred to in section 23 (5) (b) and the annual fees referred to in section 42 (1) (b) of the Liquor Act, 1977.

CHAPTER IV

15

RELATIONSHIP BETWEEN THE STATE AND THE COMPANY

Provision of Unprofitable Services at Request of State

15. (1) Should the State request the Company to construct, maintain and operate a harbour works, railway line, pipeline, building or structure, to acquire movable property or to provide a particular service that, in the opinion of the Company, is or 20 will be unprofitable, a contract shall be concluded between the State and the Company before the commencement of such construction, maintenance, operation, acquisition or provision of such service.
- (2) Notwithstanding any provision to the contrary in such contract, any other contract or any law, the provisions of subsections (3) to (5) shall apply to such 25 contract and shall be regarded as terms of the contract.
- (3) The State shall accept liability for the payment of—
- (a) the costs in connection with such construction, maintenance, operation, acquisition or provision of service together with all associated expenses and disbursements; as well as 30
 - (b) such amount as may be necessary to enable the Company to earn a reasonable profit after taxation as the result of such construction, maintenance, operation, acquisition or provision of service, substantially equivalent to the profit the Company would otherwise have earned from a similar investment of capital, use of funds and utilisation of manpower. 35
- (4) The Company shall render an account monthly to the State in respect of amounts due in terms of this section.
- (5) At the end of the Company's financial year a final certificate in respect of the full financial year shall be issued by the Company's auditor and any adjustment and payment that might be necessary shall be effected. 40
- (6) The Company may, during negotiations in connection with the contract referred to in subsection (1), require that the amount necessary for the construction of any harbour works, railway line, pipeline, building or structure shall be advanced by the State to the Company before the commencement of work, in which event such requirement shall constitute a term of the contract. 45
- (7) Notwithstanding the provisions of any other law or agreement, the provisions of subsections (3) to (5) shall apply *mutatis mutandis* to—
- (a) any service that was provided on an unprofitable basis by the South African Transport Services immediately prior to the date referred to in section 3 (1) and that is continued at the request of the State after such date; and 50
 - (b) any harbour works, railway line, pipeline, building or structure the construction of which was commenced or approved on a date prior to the date referred to in section 3 (1), which was not completed before that date and which is proceeded with at the request of the State,

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as if a contract to such effect had been concluded between the Company and the State.

(8) The Company shall not terminate the operation of a railway line without giving the Minister six months' notice of the contemplated termination.

(9) Any expense—

(a) incurred by the Company in connection with a contract contemplated by subsections (1) or (7); and

(b) that would normally have been allowed as a deduction from the Company's taxable income as an expense incurred in the production of revenue,

shall, for purposes of the Income Tax Act, 1962, be allowed as a deduction in the calculation of the Company's taxable income.

(10) This section shall apply to the provision of rail commuter services by the Company for the Corporation only if section 26 (4) should become applicable.

Guarantee by State

16. The State guarantees all obligations of the South African Transport Services transferred to the Company in terms of section 3 (2), including all obligations of the South African Transport Services in respect of its pension funds.

Strategic or Economic Interests of Republic

17. Without in any way derogating from the provisions of section 15, should the Company act in a manner contrary to the strategic or economic interests of the Republic of South Africa, the Minister may direct the Company, by means of a written notice or by any other means that he may deem desirable, to discontinue such activity within a reasonable period, which shall be stipulated in the notice or other means of communication employed.

Prohibition of Lock-outs and Strikes

18. (1) Should the Minister consider such action to be necessary in the public interest, he may by notice in the *Gazette* and supplementary to the provisions of the Labour Relations Act, 1956, impose a similar prohibition on lock-outs and strikes as that provided for in the introductory portion of section 65 (1) of that Act in respect of the Company or any part or activity thereof and employees in the employ of the Company or in such employ in connection with such part or activity.

(2) A notice published in terms of subsection (1) shall, for the purposes of the application of the Labour Relations Act, 1956, have the same effect as a notice published in terms of section 46 (7)(c) of that Act.

(3) Should a notice in terms of subsection (1) be published on a date prior to the date on which the Labour Relations Act, 1956, becomes applicable to the Company in terms of section 9 (3) of this Act, such notice shall have legal effect only from the latter date.

(4) A notice published in terms of subsection (1) may be revoked in a manner similar to that in which it was published.

Stock

19. (1) Without derogating from its capacity in terms of its memorandum of association and the provisions of the Companies Act, 1973, or from any of its powers, the Company may for so long as the State, whether directly or indirectly, on its own or together with employees of the Company, holds all the issued equity shares of the Company —

(a) with the consent of the Minister; and

(b) after consultation with the Minister of Finance in respect of the timing of the issue,

issue financial instruments of whatever nature, including stock, securities, bills, promissory notes, debentures, debenture stock, bonds, annuities and negotiable certificates of deposit.

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(2) The State guarantees the obligations of the Company arising from the financial instruments—

- (a) referred to in subsection (1); and
- (b) issued by the South African Transport Services and referred to in section 3 (3) (e).

(3) The provisions of the Companies Act, 1973, in respect of debentures shall not apply to any of the financial instruments referred to in subsection (1) or section 3 (3) (e).

(4) Financial instruments referred to in subsection (1) and section 3 (3) (e) shall, where applicable, trade in the same markets in which similar financial instruments issued by the State or statutory bodies are being traded.

(5) Where applicable, the financial instruments referred to in subsection (1) and section 3 (3) (e) may be listed on a stock exchange in the same manner and subject to the same requirements and procedures as similar financial instruments issued by the State or statutory bodies.

(6) The Company shall, as far as possible, keep a register of all issues and transfers of the financial instruments referred to in subsection (1) and section 3 (3) (e).

(7) The Company may engage in transactions, including repurchase agreements, in connection with its own and other financial instruments.

(8) No charge, tax, stamp duty, fees or other costs of any nature whatsoever are payable in respect of the issue or transfer of any of the financial instruments of the Company referred to in subsection (1) and section 3 (3) (e).

Tabling in Parliament

20. The Company's annual financial statements shall, for as long as the State is a member of the Company, be tabled in Parliament by the Minister within fourteen days of receipt thereof if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

Regulations

21. (1) At the request of the Company the Minister may promulgate regulations that are not in conflict with this Act in connection with the operation of the harbours of the Company.

(2) The Harbour Regulations in force in terms of the South African Transport Services Act, 1981, immediately prior to the date referred to in section 3 (1), shall continue to be in force and shall be deemed to have been promulgated in terms of subsection (1).

CHAPTER V**THE SOUTH AFRICAN RAIL COMMUTER CORPORATION LIMITED****Establishment and Name**

22. (1) On the date referred to in section 3 (1), a legal person, which shall be called the South African Rail Commuter Corporation Limited, shall be established.

(2) The name of the Corporation shall be deemed to appear in the Register of company names held by the Registrar of Companies.

(3) No person may carry on business and no company may be registered in terms of the Companies Act, 1973, under a name that is the same as that of the Corporation or a shortened or translated form thereof or that accords in such degree therewith that it could be misleading.

Main Object and Powers

23. (1) The main object and the main business of the Corporation is to ensure that, in the public interest, rail commuter services are provided in the Republic of South Africa.

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(2) The Corporation shall have the capacity and powers of a natural person of full capacity in so far as a juristic person is capable of having such capacity or of exercising such powers.

(3) Without derogating from the generality of the provisions of subsections (1) and (2), the Company shall have power— 5

- (a) to enter into contracts and to perform other legal acts, including the conclusion of contracts with the Company for the construction, maintenance and operation of rail commuter services;
- (b) to acquire or alienate movable and immovable property or rights therein;
- (c) to acquire or alienate rights in incorporeal things or to deal therewith in any other manner; 10
- (d) to borrow, lend or invest money;
- (e) to make, draw, issue, execute, accept, endorse, discount, buy or sell financial instruments, including promissory notes, bills of exchange, debentures, stock, shares and any other type of negotiable or transferable document, and to acquire or alienate them in any other manner; 15
- (f) to enter into indemnities, guarantees and suretyships and to secure payment in terms thereof in any manner;
- (g) to make donations;
- (h) to grant service benefits of any nature, including pension and incentive schemes, to members of the Board of Control and employees; 20
- (i) to conclude partnership contracts and to participate in joint ventures; and
- (j) to form companies or acquire interests therein and to finance them, for the purpose of realizing or advancing its main object and to transfer all or any portion of its business, assets and liabilities to such companies. 25

Board of Control

24. (1) The affairs of the Corporation shall be managed by a Board of Control of not more than ten members including the chairman, who shall be appointed and dismissed by the Minister.

(2) At least three of the members of the Board of Control shall have expertise and experience in the management of a private sector enterprise. 30

(3) The Minister shall appoint the Corporation's first Board of Control with effect from the date referred to in section 3 (1).

(4) The first Board of Control shall appoint a secretariat which shall carry out, on a full-time basis, such functions as the Board may depute to it. 35

(5) The Board of Control may, subject to such conditions as it may stipulate, delegate any of its powers to any member of the Board, employee or other person with or without the power to delegate such power further.

(6) Any action taken by a member of the Board of Control, employee or other person on behalf of the Corporation may be ratified by the Board of Control. 40

Transfer of Assets

25. (1) Right of ownership in the rail commuter assets of the South African Transport Services identified by the Minister by notice in the *Gazette*, shall be transferred to the Corporation on the date referred to in section 3 (1).

(2) The notice referred to in subsection (1) shall be promulgated before or on the date referred to in section 3 (1). 45

(3) As consideration for the assets referred to in subsection (1), the Corporation shall issue fully paid-up shares in the Corporation to the State.

(4) The value of the assets acquired by the Corporation in terms of subsection (1) shall be determined by the Minister in consultation with the Minister of Finance. 50

Operational Provisions

26. (1) Items 1 to 9 and 12 of Schedule 1 shall apply *mutatis mutandis* to the operation of the Corporation and the Corporation shall possess in respect thereof the same powers as the Company.

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(2) The rights and obligations of the Department of Transport arising out of any operating agreement entered into between the Department of Transport and the South African Transport Services in connection with the operation of rail commuter services shall be transferred to the Corporation on the date referred to in section 3 (1). 5

(3) The operating agreement referred to in subsection (2) shall thereafter in so far as possible be interpreted and applied as a contract between the Corporation and the Company.

(4) Should no agreement exist between the Department of Transport and the South African Transport Services in connection with the operation of rail commuter services on the date referred to in section 3 (1), the provisions of section 15 (3) to 15 (5) shall apply *mutatis mutandis* to the continued operation by the Company of rail commuter services as if a contract to that effect had been concluded between the Company and the Corporation—

(a) until such time as an operating agreement has been entered into between 15 the Company and the Corporation; or

(b) until the expiry of a period of written notice by the Corporation to the Company to cease the rendering of the services.

(5) The period of notice referred to in subsection (4) (b) shall be not less than twelve months. 20

Guarantee by State

27. (1) For so long as the State, whether directly or indirectly, on its own or together with employees of the Corporation, holds all the issued equity shares of the Corporation, the State guarantees all the obligations of the Corporation.

(2) Should the Corporation suffer a loss in a particular financial year, an amount 25 equivalent to the loss, after certification by the Auditor-General, shall be paid to the Corporation by the State within three months from the date of such certification.

Accounting and Financial Statements

28. (1) The Corporation shall keep such books of account as are necessary in accordance with generally accepted accounting practice to reflect in a reasonable 30 manner the state of the affairs and business of the Corporation and to disclose the transactions and financial condition of the Corporation.

(2) The Corporation shall draw up financial statements in respect of each financial year in a form to be stipulated by the Board of Control.

(3) The books and annual financial statements of the Corporation shall be audited 35 annually by the Auditor-General.

(4) The Corporation's annual financial statements relating to its activities during that financial year and the report of the Auditor-General shall be tabled in Parliament by the Minister within fourteen days of receipt thereof if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 40 fourteen days of the commencement of its next ensuing ordinary session.

Liquidation

29. The Corporation shall be liquidated or placed under judicial management only on the authority of an Act of Parliament.

Regulations

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30. The Minister may, by notice in the *Gazette*, promulgate regulations that are not in conflict with this Act, in connection with—

(a) the activities, powers, functions and duties of members of the Board of Control;

(b) the holding of, and procedures at, meetings of the Board of Control and 50 any committee thereof;

(c) the exemption of the Corporation from the application of any law that does not apply to the State;

(d) the operating powers of the Corporation; and

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- (e) any matter considered desirable for the purpose of the realization of the main object of the Corporation.

Application of Laws

31. (1) The provisions of sections 18 and 19 of this Act shall apply *mutatis mutandis* to the Corporation. 5
- (2) Subject to the provisions of subsection (3), the provisions of the Companies Act, 1973, shall not apply to the Corporation.
- (3) The Minister may, at the request of the Board of Control, by notice in the *Gazette*, declare that any provision of the Companies Act, 1973, shall be made applicable to the Corporation with such amendments as he may stipulate and he may, at the request of the Board, amend or revoke such notice. 10
- (4) The Corporation shall be exempt from the payment of any tax, transfer duty, stamp duty, levy or fee that, in terms of any law (excluding a law relating to customs and excise, sales tax or regional services levy), had it not been for this provision, would have been payable by the Corporation to the State. 15
- (5) The exemptions for which provision is made in subsection (4) shall apply only for so long as—
- (a) the State, whether directly or indirectly; and
- (b) the employees of the Corporation, whether in their own name or by means of a trust, 20
- together hold all the issued equity shares of the Corporation.

CHAPTER VI

GENERAL PROVISIONS

Transfer of Business Units

32. (1) The Company shall be entitled for the purpose of restructuring its affairs or of privatisation— 25
- (a) to form companies in terms of the Companies Act, 1973;
- (b) to divide its activities at its discretion into business units and to transfer to such companies all or some of such units, or parts thereof, including assets, liabilities, rights and obligations; and 30
- (c) to acquire fully paid-up shares in those companies as consideration therefor.
- (2) The provisions of sections 4 (2), (3) and (5) shall apply *mutatis mutandis* to the transfer of assets and the issue of shares in terms of subsection (1).

Powers of Registrar of Deeds 35

33. (1) In order—
- (a) to record the transfer of immovable property or real rights in terms of sections 3, 9 and 25;
- (b) to effect transfer of immovable property or real rights to a company referred to in sections 23 (3) (j) and 32; 40
- (c) to effect transfer of right of ownership in immovable property to a person who purchased such property in terms of one of the house-ownership schemes of the South African Transport Services; or
- (d) to register a bond in favour of the Company, the Corporation or the company in whose employ the person involved then might be, over the immovable property referred to in paragraph (c) as security for the payment by such person of any amount owing to the mortgagee concerned in terms of the relevant contract, 45
- the Registrar of Deeds who exercises jurisdiction over the area in which the immovable property involved is situated, shall effect the entries, notes or endorsements that he considers necessary in or on any relevant register, title deed or other document in his office or submitted to him; provided that, should any information or document be lacking that is necessary for that purpose, it shall be provided by the Company or the mortgagee concerned in the required form.
- (2) Notwithstanding the provisions of any law or regulation published under the Attorneys Act, 1979, any person in the employ of the Company who is admitted and 55

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enrolled as a conveyancer in terms of section 18 of the said Act may carry out any act in any deeds registry in the Republic of South Africa, including the preparation, lodgment and execution of any transfer deed or document as may be required of the Company in terms of subsection (1) with regard to the registration or transfer of immovable property or real rights. 5

(3) Should a deed of alienation of immovable property to which the Company is a party contain a restrictive condition to the effect that such immovable property and other immovable property specified therein may not be alienated separately without the permission of the Company, the Registrar of Deeds shall record such condition in the manner that he considers to be the most practicable. 10

(4) A restrictive condition recorded in terms of subsection (3) shall be binding on and have legal effect in respect of all persons except a person in favour of whom a bond or restrictive condition was registered over the immovable property prior to the recording of the former restrictive condition.

Shares for Employees

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34. (1) The Company or any subsidiary of the Company shall be entitled to adopt and implement any scheme providing for employees to participate in shares in the Company or the subsidiary, as the case may be, including the making of one or more offers of fully paid-up shares to employees of the Company or the subsidiary, as the case may be, with more than a prescribed number of years of service (which shall be 20 prescribed by the Company or the subsidiary, as the case may be) with the employer concerned and its predecessors.

(2) Such offers may be made subject to such provisions, conditions or restrictions as may be decided by the employer concerned.

(3) An offer of shares in terms of subsection (1) shall for all purposes in terms of 25 the Companies Act, 1973, be deemed to be an offer which is not made to the public.

Charges and Taxes

35. (1) No levy, tax, transfer duty, stamp duty or any other charges or fees of any nature whatsoever imposed by statute shall be paid by any one of those involved in respect of any transfer of any assets or rights in terms of or pursuant to the provisions 30 of sections 3, 4, 9, 23 (3) (j), 25, 32 and 33.

(2) The Company, the Corporation and their subsidiaries, as the case may be, shall be exempt from liability for the payment of the fees referred to in sections 63 (2) and 75 (3) of the Companies Act, 1973, and of any fees payable in terms of the Stamp Duties Act, 1968, in respect of the issue of— 35

- (a) the shares to the State referred to in sections 2, 4 and 25;
- (b) the shares to the Corporation referred to in section 23 (3) (j); and
- (c) the shares to the Company referred to in section 32.

(3) The exemptions for which provision is made in this section shall apply—

- (a) to the Company only for as long as— 40
 - (i) the State, directly or indirectly; and
 - (ii) the employees of the Company, whether in their own name or indirectly by means of a trust, together hold all the issued equity shares of the Company;
- (b) to the Corporation only for as long as— 45
 - (i) the State, directly or indirectly; and
 - (ii) the employees of the Corporation, whether in their own name or indirectly by means of a trust, together hold all the issued equity shares of the Corporation; and

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- (c) to a subsidiary of the Company or the Corporation, as the case may be, only for as long as—
- (i) the requirements of paragraph (a) or (b) above have been met; and
 - (ii) the Company or the Corporation, as the case may be, whether on its own or together with the State or employees of the subsidiary (whether in their own name or indirectly by means of a trust), hold all the issued equity shares of the subsidiary concerned. 5

CHAPTER VII

AMENDMENT, REPEAL AND INTERPRETATION OF LAWS

Interpretation of Laws in Part 1 of Schedule 2 10

36. (1) The references to—

- (a) the “South African Transport Services”;
- (b) the “South African Railways and Harbours Administration”; and
- (c) the organisation referred to in paragraphs (a) and (b) regardless of the words used to refer thereto, 15

in the laws referred to in Part 1 of Schedule 2, shall be construed as references to the Company and the Corporation.

Interpretation of Laws in Part 2 of Schedule 2

(2) The references to—

- (a) the “State”; 20
- (b) a “Department of State”;
- (c) the “South African Transport Services”;
- (d) the “South African Railways and Harbours Administration”; and
- (e) the organisation referred to in paragraphs (c) and (d) regardless of the words used to refer thereto, 25

in the laws referred to in Part 2 of Schedule 2 shall be construed as including the Company and the Corporation.

Interpretation of Laws in Part 3 of Schedule 2

(3) The references to the “General Manager of the South African Transport Services”, the “General Manager”, or the “General Manager of the Railway Administration” in the laws referred to in Part 3 of Schedule 2 shall be construed as references to the Managing Director of the Company. 30

Interpretation of Laws in Part 4 of Schedule 2

(4) The references to the “Railways and Harbours Fund” in the laws referred to in Part 4 of Schedule 2 shall be construed as references to the Company and the Corporation. 35

Interpretation of Laws in Part 5 of Schedule 2

(5) The references to “harbour” in the laws referred to in Part 5 of Schedule 2 shall be construed as references to the harbours of which the Company has become the owner in terms of sections 3 (2) and 3 (3) (a) of this Act. 40

Repeal of Laws in Part 6 of Schedule 2

(6) The laws referred to in Part 6 of Schedule 2 are repealed to the extent indicated in the third column thereof.

Amendment, repeal or interpretation of Laws in Part 7 of Schedule 2

(7) The laws referred to in Part 7 of Schedule 2 are amended, repealed or 45 interpreted, as the case may be, to the extent or in the manner indicated therein.

Repeal of Provisions of this Act

(8) The State President may repeal, in whole or in part, by proclamation in the Gazette, sections 10, 12, 14, 17 and 18 of this Act.

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CHAPTER VIII

SHORT TITLE AND COMMENCEMENT

Short Title and Commencement

37. (1) This Act shall be called the Legal Succession to the South African Transport Services Act, 1989, and shall, subject to the provisions of subsection (2), 5 come into operation on a date to be stipulated by the State President by proclamation in the *Gazette*.

(2) The provisions of Chapters II, III, IV, V, VI and VII of this Act shall come into operation on the date referred to in section 3 (1).

Schedule 1

OPERATING PROVISIONS, OPERATING POWERS AND OFFENCES

Compensation for Livestock killed or injured by Trains

1. (1) The Company shall pay compensation to the owner of any livestock killed or injured by a train; provided that no compensation shall be payable in respect of any livestock killed or injured where the killing or injury is due to the negligence of the owner or his employee.

(2) No person shall be entitled to compensation under this provision for the death or injury of any livestock unless he, within seventy-two hours after the death or injury of the livestock, gives notice to the officer in charge of the nearest station or employee in charge of a section, of the death or injury and of the number and kind of livestock killed or injured in respect of which compensation is claimed; provided that if an employee of the Company was aware of the death or injury, it shall be sufficient compliance with this provision if such notice be given within a reasonable time after such death or injury.

(3) The carcasses or remains of all livestock killed and all injured livestock in respect of which any compensation is claimed under this provision shall be diligently and to the best of his ability kept and preserved by the owner making the claim for a period of not less than three full days from the time when the death or injury occurred or until such time as the carcasses or remains have been inspected by a person appointed to ascertain the value of the livestock killed or injured; provided that if any livestock is seriously injured or maimed, and the owner, his employee or an employee of the Company considers it advisable, he may kill such livestock without in any way affecting the question of the liability or otherwise of the Company for the value of such livestock.

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

Payment of Compensation for certain Fire Damage

2. (1) When any property has been destroyed or damaged by a fire caused by a burning object coming from a locomotive or train operated by the Company (the onus of proof of which shall be upon the claimant), the Company shall, subject to the provisions of paragraph (2), be liable for the payment of compensation in respect of such destruction or damage and the claimant shall not be required to prove that the fire was due to negligence on the part of the Company or its employees; provided that the Company is notified within three days of such destruction or damage.

(2) The amount of such compensation for loss of or damage to property caused by fire referred to in paragraph (1), shall be—

- (a) in the case of property which at the time of the said fire was protected by a firebreak defined in paragraph (3), a sum equivalent to common law damages; or
- (b) in the case of property which at the time of the said fire was not protected by a firebreak defined in paragraph (3), fifty per cent of such common law damages.

(3) For the purpose of paragraph (2) a firebreak means—

- (a) in the case of property directly adjoining a railway line, excluding property mentioned in subparagraph (b), a belt of ground at least eight metres in width that was, immediately before and at the time of the fire referred to in paragraph (1), completely devoid of any inflammable material, that is situated at least forty-five metres but not more than sixty metres from the centre-line of the railway line and that extends parallel to the railway line for the full distance that the railway line runs over the property;
- (b) in the case of property directly adjoining a railway line on which agricultural vegetation of any nature, kind, class or category whatsoever, including trees, is planted, sown or cultivated in any other manner, or on which natural forests or trees grow, a belt of ground at least fifty metres in width, measured from the centre-line of the railway line, that was, immediately before and at the time of the fire referred to in paragraph (1), completely devoid of any inflammable material and that extends parallel to the railway line for the full distance that the railway line runs over the property;
- (c) in the case of property not directly adjoining a railway line, a belt of ground at least eight metres in width that was, immediately before and at the time of the fire referred to in paragraph (1), completely devoid of any inflammable material and that was made along the borders of the said property;

provided that the Company may, on the written request of the owner or occupier of property, at its discretion and if deemed expedient under the circumstances, amend the provisions for the making of firebreaks as stated above in respect of such property or any part of such property, as the case may be, or substitute such provisions by different provisions.

(4) When any property has been destroyed or damaged by fire caused by an employee of the Company acting in the course of his duty on property of the Company, the provisions of this item shall *mutatis mutandis* apply to such destruction or damage.

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

(2) The use of a whistle, siren or hooter of a train shall be obligatory only during the hours of 05h00 to 23h00 and no legal obligation shall rest on the Company to give users of a crossing audible warning of the approach of a train between 23h01 and 04h59.

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

Access

4. (1) The Company shall be entitled—

(a) in the event of damage to a railway line or pipeline as the result of a washaway, derailment, or similar accident, to enter, without previous permission, land adjoining the railway reserve, to take therefrom such reasonable quantity of earth, rock or other material as may be necessary for the purpose of effecting the necessary repairs and to construct and use thereon such temporary deviations of the railway line or pipeline as the Company may deem necessary; and

(b) should a tree, bush, growth, fence, embankment or other obstruction on land adjoining the railway reserve, in the opinion of the Company, constitute a potential danger or hindrance to the safe and proper exploitation of the railway line or pipeline or the telegraph or telephone services established in connection therewith, to remove, after reasonable notice to the owner or occupier of such land, as much of such tree, bush, growth, fence, embankment or other obstruction as, in the opinion of the Company, could endanger or hinder such safe and proper exploitation; provided that should such obstruction, in the opinion of the Company, actually endanger or hinder such safe and proper exploitation, the Company may undertake the work that is immediately necessary to eliminate the danger or hindrance without such notice.

(2) The Company shall pay compensation to any person in respect of damage to property sustained by him arising out of the exercising of its powers referred to in paragraph (1).

Lost Property

5. (1) When property is found on premises under the control of the Company or in any area within the boundaries of an airport which has evidently been lost, forgotten or left behind (hereinafter referred to as "lost property") by the owner or other person who may be entitled to such property (hereinafter referred to as the "rightful owner"), the person finding such property shall immediately hand it over to the Company by handing it in at the nearest office of the Company.

(2) Notwithstanding anything to the contrary contained in the Aviation Act, 1962, and the regulations promulgated under the said Act, lost property found in that part of an airport falling under the jurisdiction of the Department of Transport and handed over to the Company in terms of paragraph (1) shall be dealt with in the same manner as laid down in paragraph (3); provided that the Department of Transport and the Company mutually agree to the basis on which the proceeds of such lost property shall be divided.

(3) Lost property handed over to the Company in terms of these provisions shall, in the case of property other than negotiable instruments, coins and banknotes, be stored in a warehouse for the account of the rightful owner and shall, in the case of negotiable instruments, coins and banknotes, be paid into an appropriate suspense account for the account of the rightful owner; provided that the Company shall not be liable for any loss of or damage to lost property thus stored in a warehouse, irrespective of how such loss or damage may have been caused.

(4) If lost property handed over to the Company in terms of these provisions is not claimed by the rightful owner within three months of the date on which it was handed over to the Company, the rightful owner shall be deemed to have relinquished ownership of the lost property and such property shall be sold at a public auction, provided that—

(a) negotiable instruments, coins and banknotes, after expiry of the period of three months referred to, shall be deemed to be the property of the Company;

(b) perishable lost property may be sold at any time and in any manner after being handed over;

(c) worthless lost property may be destroyed at any time after being handed over; and

(d) lost property to which the Department of Finance has a right in terms of the Customs and Excise Act, 1964, be handed over to the Department of Finance after expiry of the period of three months referred to.

Disposal of Unclaimed Goods

6. (1) When any goods other than lost goods referred to in item 5 have come into the possession of the Company for transport or otherwise and are not claimed by the owner or other person appearing to the Company to be entitled thereto or when a declaration in a consignment note in connection with the nature and mass of the goods is false in any material way or when the ownership of the goods is uncertain in consequence of the incorrect or incomplete address of the consignee, the Company shall, if the owner or other person be known, cause a notice to be served upon him requiring him to remove the goods.

(2) If the owner or other person be not known or the notice cannot be served on him, or if he does not comply with the notice, the Company may sell the goods by public auction, rendering the surplus (if any) of the proceeds of the sale to any person entitled thereto, and in the meantime the Company may place the goods in a warehouse and thus free itself from any further liability.

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

(4) A sale of goods in terms of these conditions shall create for the purchaser a right of ownership in the goods, which shall be regarded for all purposes as a valid legal title against all other claimants.

Expropriation

7. (1) The Company shall be entitled, with due regard to the relevant provisions of the Expropriation Act, 1975, to expropriate movable and immovable property.

(2) For the purpose of the exercising of this power—

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- (a) the references in section 4 of the Expropriation Act, 1975, to the South African Transport Services shall be construed as references to the Company;
- (b) the reference therein to the South African Transport Services Act, 1981, shall be construed as a reference to paragraph (1) hereof;
- (c) the reference therein to the Minister shall be construed as a reference to the Chairman of the Company;
- (d) the reference therein to the General Manager and a Deputy General Manager shall be construed as a reference to the Managing Director and any other Director of the Company; and
- (e) section 4 (4) of the Expropriation Act, 1975, is repealed.

(3) The Company shall be entitled, in contemplation of an expropriation in terms of paragraph (1) hereof, to enter upon any land with the necessary workmen, equipment and vehicles to survey and take levels of the land, to dig or bore into the soil, to construct and maintain a measuring weir in any river or stream, to demarcate the boundaries of any land and to perform any other act that is reasonably necessary in order to ascertain whether any land or rights which may be required by the Company for the construction or deviation of any railway, or for any other of its activities, is or are suitable for the purposes contemplated; provided that the Company may specially authorize any person to exercise the said powers and provided that no such person shall, without the consent of the owner or occupier, enter any dwelling or enter upon any enclosed yard or garden attached to a dwelling unless he has given the owner or occupier at least twenty-four hours' notice of his intention to do so.

Construction Work

8. (1) The Company shall be exempted from the application of the provisions of any by-law or the requirements of any local authority which relates to construction work on property under the control of the Company, including the construction, maintenance, alteration and repair of any tunnel, bridge, culvert, viaduct, retaining wall, railway line, platform, road embankment, cutting, passage, crossing, pipeline, drainage work, fence, harbour work or supporting structure for the purpose of a railway, pipeline or harbour.

(2) Subsection (1) shall not be applicable to buildings to which the public has access or which are intended for use by employees of the Company or other persons as offices or workshops.

Telecommunication and Electricity Supply Networks

9. (1) Subject to the provisions of paragraph (2), the Company shall be entitled, for the purpose of any activity in which it may legally engage, to construct and maintain telecommunication and electricity supply networks on any premises or at any place that it occupies for the purpose of any such activity or between such premises or place and any other premises or place that it likewise occupies.

(2) In the exercising of its powers in terms of paragraph (1), the Company shall be entitled to enter upon any land or public road and to carry out any excavations there that are necessary for the erection of poles and the laying of lines or underground connections and to erect or lay the necessary poles, cables or wires; provided that—

- (a) no excavations for the erection of poles or the laying of cables or wires shall be carried out without the prior written authority of the local authority under whose control such road falls;
- (b) all surface telecommunication cables or wires shall be at least three metres (or three comma six five metres in the immediate vicinity of a town) above the surface unless carried over a street, road or pathway over which vehicular traffic may be expected, in which event they shall be at least four comma two five metres (or five comma five metres in the immediate vicinity of a town) above the surface;
- (c) all electricity supply networks shall comply with the requirements of all applicable laws; and
- (d) all cables, wires or connections shall be constructed in such manner as not to obstruct or hinder the free use or enjoyment of such street, road or pathway to a greater degree than is absolutely necessary for the proper construction, placing in service or maintenance of the system.

(3) The Company shall pay compensation to any person in respect of damage to property sustained by him arising out of the exercising of its powers for which provision is made in this item.

Harbours

10. (1) The harbours of the Company are compulsory pilotage harbours with the result that every ship entering, leaving or moving in such a harbour shall be navigated by a pilot who is an employee of the Company, with the exception of ships that are exempt by statute or regulation.

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

(3) The pilot shall determine the number of tugs required for pilotage in consultation with the Port Captain, whose decision shall be final.

(4) A master shall at all times remain in command of his ship and neither he nor any person under his command may, while the ship is under pilotage, in any way interfere with the navigation or movement of the ship or prevent the pilot from carrying out his duties except in the case of an emergency, where the master may intervene to preserve the safety of his ship, cargo or crew and take whatever action he deems necessary to avert the danger.

(5) Where a master intervenes, he shall immediately inform the pilot thereof and, after having restored the situation, he shall permit the pilot to proceed with the execution of his duties.

(6) The master shall ensure that the officers and crew are at their posts, that a proper look-out is kept and that the pilot is given every assistance in the execution of his duties.

(7) The Company and the pilot shall be exempt from liability for loss or damage caused by a negligent act or omission on the part of the pilot.

(8) For the purpose of this item, "pilot" shall mean any person duly licensed by the Company to act as a pilot at a particular harbour.

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11. The Company shall be entitled—

- (a) to order that a ship, which has been arrested or attached by order of court or otherwise, be moved to another place within the harbour and, if necessary, to move such ship to that place;
- (b) to erect, maintain and operate lighthouses, beacons, port lights and signal stations;
- (c) to remove any light which may confuse a ship if the owner of the property on which the light is used or the person having charge of such light fails to extinguish or effectively screen it within seven days of notice to do so having been served on him and to recover the expenses of such removal from the said owner or person;
- (d) to raise, remove or destroy any sunken, stranded or abandoned ship or wreck within the area owned by the Company, to recover from the person liable in terms of this paragraph all costs incurred in such raising, removal or destruction and in lighting, buoying, marking or detaining the ship or wreck and, on non-payment after written demand of such costs or any part thereof, to sell such ship or wreck and out of the proceeds of the sale defray such unpaid costs, rendering the surplus, if any, to the person entitled thereto and recovering any unpaid balance from the owner of such ship or wreck or from the person who was the owner of the ship at the time it was sunk, stranded or abandoned; and
- (e) to give notice to the owner or other person legally responsible for the upkeep of any ship within the area of the Company, calling upon him to remove or otherwise dispose of such ship which in the opinion of the Company is not seaworthy or which is likely to become an obstruction, wreck or derelict, and to do whatever may be necessary for the removal or disposal of such ship and to recover all costs incurred from the said owner or person should the said owner or person fail to comply with such notice within the time specified therein.

Offences

12. (1) A person who—

- (a) smokes in any place or in any vehicle under the control of the Company where a notice forbidding smoking in that place is displayed;
- (b) enters or leaves any train while it is in motion or at a place other than at the side of a coach or other vehicle adjoining the platform, or at another place appointed by the Company for passengers to enter or leave the coach or other vehicle, or opens any outer door of any coach or other vehicle while it is in motion;
- (c) travels or attempts to travel on or in any part of a train not intended for the use of passengers;
- (d) knowingly acts in such a manner as to inconvenience in an unreasonable manner a passenger in any vehicle of the Company;
- (e) occupies a seat in a vehicle, enters a part of a vehicle, or is present at a place in a vehicle that he is not entitled to occupy, enter or be present in;
- (f) disobeys a reasonable instruction from an employee of the Company, the purpose of which is to maintain order on any premises or vehicle under the control of the Company or to control any emergency which may prevail on such premises or vehicle;
- (g) performs any act on premises or a vehicle under the control of the Company that could cause the injury or death of a person or damage to property;
- (h) crosses a railway line without the authority of the Company at a place where a level crossing or pedestrian crossing has not been constructed;
- (i) performs any act that hinders the proper exploitation of a service of the Company or that endangers or might endanger the lives of persons travelling on a vehicle;
- (j) without lawful authority moves any part of the rolling stock on a railway line or places or leaves it on any part of a railway line;
- (k) without lawful authority moves any signals, indicators, points, rods, wires, sleepers, rails, stop blocks or any other track equipment or machinery or interferes with the operation thereof or displays any signal which could probably be misleading;
- (l) without the prior permission of the Company or without sound and adequate reason makes use of or interferes with a means of communication provided by the Company between passengers and an employee or between employees of the Company;
- (m) without the permission of the Company offers any article for sale, sells any article or distributes any article free of charge on premises or a vehicle under the control of the Company;
- (n) without the prior permission of the Company brings a firearm onto premises or a vehicle under the control of the Company;
- (o) enters a vehicle of the Company or travels therein knowing that he is suffering from an infectious or contagious disease;
- (p) fails to immediately hand over to the Company, in accordance with item 5 of this Schedule, lost property found on property under the control of the Company or within the boundaries of an airport or removes an article, which he has no right to remove, from such place;
- (q) wilfully obstructs or hinders an employee of the Company in the execution of his duties;
- (r) drives an animal onto a railway line or within the area of a railway reserve or wilfully permits it to stray thereon or therein for a purpose other than that of lawfully crossing the railway line, whether he be the owner of the animal or only in charge thereof;
- (s) is present in a vehicle under the control of the Company and refuses, upon being requested to do so by an authorized official of the Company, to hand over a valid ticket, letter of authority or the applicable cash amount for the actual journey being undertaken; or
- (t) without the permission of the Company places himself in such a position that any part of his body or any object in contact with his body is closer than one metre from the live overhead track equipment forming part of the Company's electrification network,

shall be guilty of an offence and on conviction any competent court may impose, in its discretion, a fine or imprisonment, or a fine and imprisonment, or any other suitable punishment within its jurisdiction.

(2) For the purposes of paragraph (1), "vehicle" means a train, a passenger coach or other form of rolling stock, an aircraft, a motor vehicle, a ship or other marine craft.

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Schedule 2

AMENDMENT, REPEAL AND INTERPRETATION OF LAWS
SCHEDULE 2 PART 1

No. and year of Act	Short title	No. of section (or description of provision where otherwise indicated)
24 of 1921	Durban Waterworks Consolidation (Private) Act, 1921	7 and 20
9 of 1927	Land Survey Act, 1927	46 (1) (b)
12 of 1927	Durban Borough (Extension of Area) Act, 1927	Wherever it appears in Act
21 of 1935	Sea-shore Act, 1935	13 (b)
21 of 1940	Advertising on Roads and Ribbon Development Act, 1940	9 (1) (b), 9A (1) (ii) and 11 (4A)
44 of 1948	Transport (Co-ordination) Act, 1948	5 (6)
40 of 1949	Transfer Duty Act, 1949	9 (9)
17 of 1950	Rand Water Board Statutes (Private) Act, 1950	143 and 144B (4)
26 of 1950	Cape Town Foreshore Act, 1950	10 (1) (g)
54 of 1956	Water Act, 1956	5 (3), 11 (2), 14, 23 (1) (a), 56 (3), 69 (1) (a), 82 (2), 89 (1) (j), 94 (1), 108 (2), 110 (1) (a) and (i), 113 (1) (b), 152 and 175
44 of 1957	Defence Act, 1957	99 (2) and 144
44 of 1958	Post Office Act, 1958	1 (in the definition of "railway") and 79
41 of 1960	Level Crossings Act, 1960	Wherever it appears in Act
61 of 1961	Indemnity Act, 1961	1 (1) (d)
91 of 1964	Customs and Excise Act, 1964	38 (3) (b) and 43 (3)
45 of 1965	Atmospheric Pollution Prevention Act, 1965	47 (4)
88 of 1967	Physical Planning Act, 1967	6B (1)
59 of 1968	Marketing Act, 1968	96
76 of 1969	Soil Conservation Act, 1969	17 (1)
89 of 1970	National Supplies Procurement Act, 1970	18 (2) (b) (iii)
54 of 1971	National Roads Act, 1971	4 (3) (a), 12 (1) and 13 (2) (a)
78 of 1977	Urban Transport Act, 1977	13 (1) (c)
53 of 1979	Attorneys Act, 1979	83 (12) (c)
73 of 1980	Dumping at Sea Control Act, 1980	1 (2)
84 of 1982	Protection of Information Act, 1982	1 (1) (in the definition of "Government")
9 of 1983	Perishable Products Export Control Act, 1983	10 (g)
35 of 1984	Animal Diseases Act, 1984	26 (1) and (3)
79 of 1984	Rating of State Property Act, 1984	3 (3) (b)
122 of 1984	Forest Act, 1984	24 (3) (b)
40 of 1987	Eskom Act, 1987	1 (in the definition of "undertaking") and 5 (1) (e)

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No. and year of Act	Short title	No. of section (or description of provision where otherwise indicated)
41 of 1987	Electricity Act, 1987	1 (in the definition of "undertaking") and 17
58 of 1987	Transport Advisory Council Act, 1987	3 (1) (a) and (i) and 9

Schedule 2 Part 2

No. and year of Act	Short title	No. of section (or description of provision where otherwise indicated)
16 of 1937	Uitenhage (Groendal) Water (Private) Act, 1937	6 (in the third place in which the reference appears)
58 of 1962	Income Tax Act, 1962	9 (1) (e), 10 (1) (h), 10 (1) (p), 10 (1) (r), 11 sex and in paragraph 20 (1) (a) (i) of the First Schedule
70 of 1970	Subdivision of Agricultural Land Act, 1970	Item (c) in the definition of "agricultural land" in 1, and 2 (a)
89 of 1970	National Supplies Procurement Act, 1970	2A
103 of 1977	National Building Regulations and Building Standards Act, 1977	2 (3) and (4) but this provision shall lapse two years after the date referred to in section 3 (1) of this Act
41 of 1987	Electricity Act, 1987	6 (1) (a)

Schedule 2 Part 3

No. and year of Act	Short title	No. of section (or description of provision where otherwise indicated)
44 of 1948	Transport (Co-ordination) Act, 1948	3 (5) (a) (ii)
41 of 1960	Level Crossings Act, 1960	Wherever it appears in Act
99 of 1987	Fire Brigade Services Act, 1987	2 (2) (i)

Schedule 2 Part 4

No. and year of Act	Short title	No. of section
26 of 1950	Cape Town Foreshore Act, 1950	14 (1)
94 of 1969	Members of Statutory Bodies Pension Act, 1969	2 (3) (c)

Schedule 2 Part 5

No. and year of Act	Short title	Description of provision
57 of 1951	Merchant Shipping Act, 1951	Paragraph (b) of the definition of "port" in section 2 (1) in the first place where it occurs in that paragraph
2 of 1981	Marine Traffic Act, 1981	The definition of "harbour" in section 1

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Schedule 2 Part 6

No. and year of Act	Short title	To what extent repealed
24 of 1921	Durban Waterworks Consolidation (Private) Act, 1921	The definition of "Railway Administration" in section 2 (6) and the second proviso to section 8
9 of 1927	Land Survey Act, 1927	The words "or by the State in its Administration of Railways and harbours" in section 45
12 of 1927	Durban Borough (Extension of Area) Act, 1927	The words "out of moneys to be voted by Parliament," in section 5 (2)
13 of 1932	Mafeking Waterworks (Private) Act, 1932	Section 6 (1) (b)
38 of 1934	Vaal River Development Scheme Act, 1934	The words "including the South African Railways and Harbours Administration" in section 6 (1)
21 of 1935	Sea-shore Act, 1935	The definition of "Administration" in section 1
23 of 1945	Saldanha Bay Water Supply Act, 1945	The words "the Railway Administration," in section 2 (b)
54 of 1947	South African Tourist Corporation Act, 1947	The words "and the Railway and Harbour Fund, in the proportions determined by the Minister in consultation with the Minister of Finance and the Minister of Transport," in section 12 (1)
40 of 1949	Transfer Duty Act, 1949	The words "including the South African Transport Services," in section 9 (1) (a)
51 of 1949	Air Services Act, 1949	The definition of "person" in section 1, the proviso to section 4 (1) (b), the words "in respect of any air services provided by the Railway Administration, and shall also apply" in section 24, and the words "binds railway administration and" in the heading of section 24
2 of 1953	Lichtenburg Waterworks (Private) Act, 1953	Section 4 (1) (b)
24 of 1956	Pension Funds Act, 1956	The words "including the South African Railways and Harbours Administration," in section 2 (3) (a) (i)

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No. and year of Act	Short title	To what extent repealed
25 of 1956	Friendly Societies Act, 1956	The words "including the South African Railways and Harbours Administration," in section 3 (2) (c)
54 of 1956	Water Act, 1956	The word "Government" in section 175
20 of 1957	State Liability Act, 1957	The words "or the Railways and Harbours Fund, as the circumstances may require." in section 3
36 of 1960	Durban Waterworks (Private) Act, 1960	The second proviso to section 4 (1)
48 of 1961	State Land Disposal Act, 1961	The words "but in relation to any land which in terms of any law falls under the control and management of the South African Transport Services referred to in section 2 of the South African Transport Services Act, 1981 (Act No. 65 of 1981), 'Minister' means the Minister of Transport Affairs" in the definition of "Minister" in section 1
6 of 1962	Archives Act, 1962	The words "the South African Railways and Harbours Administration and" in the definition of "government office" in section 1
58 of 1962	Income Tax Act, 1962	The words "including the Railway Administration and" in section 9 (1) (g), the words "including the South African Transport Services," in section 10 (1) (a) and the words "the South African Transport Services and" in section 10 (1) (cA)
45 of 1965	Atmospheric Pollution Prevention Act, 1965	Section 6 (2) (c) (iii), and the words "excluding the Railway Administration, but" in section 47 (3)
30 of 1966	Unemployment Insurance Act, 1966	Section 2 (2) (o)
39 of 1968	South West Africa Constitution Act, 1968	Section 35
77 of 1968	Stamp Duties Act, 1968	The words "the South African Transport Services" in the definition of "public revenue" in section 1, in section 4 (1) (a) and in item 20 (d) and (f) of Schedule 1

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No. and year of Act	Short title	To what extent repealed
94 of 1969	Members of Statutory Bodies Pension Act, 1969	The definition of "Railway and Harbour Fund" in section 1
89 of 1970	National Supplies Procurement Act, 1970	The words "or the South African Transport Services Board" in section 18 (2) (b) (iii)
66 of 1975	Exchequer and Audit Act, 1975	The words "the South African Transport Services and" in the definition of "revenue" in section 1, the words "the South African Railways and Harbours Administration," in section 35 (1), the words "the South African Railways and Harbours Administration or" in section 35 (2) (a), and section 42 (2)
63 of 1977	Health Act, 1977	The words "The Railways and Harbours Fund," and "Railways and Harbours Administration," in section 54 (6)
74 of 1977	Road Transportation Act, 1977	The words "any member of the South African Railways Police Force in respect of any place whether within or beyond the limits of the railways as defined in section 1 of the South African Transport Services Act, 1981 (Act No. 65 of 1981), or of the harbours as defined in the said section," in the definition of "authorised officer" in section 1 (1), and sections 1 (2) (p), (q) and (r), 5 (1) (c) and 45
87 of 1977	Liquor Act, 1977	The words "or the Railways Administration" in the definition of "Government" in section 1, section 209 (2) (b), section 210 (1) (c) (i), and the words "including the Railways Administration," in section 210 (1) (c)
65 of 1981	South African Transport Services Act, 1981	The whole but the regulations promulgated in terms of section 4 (7) thereof shall remain in force, such regulations may be amended or repealed by the Minister, and section 16 of this Act shall apply to all obligations of the South African Transport Services or the Company in terms of such regulations

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No. and year of Act	Short title	To what extent repealed
6 of 1983	Machinery and Occupational Safety Act, 1983	Section 40 from a date two years after the date determined in terms of section 3 (1) of this Act
17 of 1983	The South African Transport Services Finances and Accounts Act, 1983	The whole
45 of 1984	Public Investment Commissioners Act, 1984	The words "the South African Transport Services," in paragraph (a) (i) of the definition of "deposit" in section 1, and section 6 (1) (e) (ii)
46 of 1984	Corporation for Public Deposits Act, 1984	The words "the South African Transport Services," in paragraph (a) (i) of the definitions of "public deposit" in section 1, and section 3 (1) (a) (vi) (aa)
79 of 1984	Rating of State Property Act, 1984	Subparagraph (b) of the definition of "State" in section 1 (1)
111 of 1984	Public Service Act, 1984	The words "the South African Transport Services," in section 14 (1)

Schedule 2 Part 7

Application of Rating of State Property Act, 1984 (Act No. 79 of 1984)

- (1) (a) Notwithstanding the provisions of this Act or of Act No. 79 of 1984, no rates shall be imposed by a local authority, as defined in section 1 (1) of Act No. 79 of 1984, on the property of the Company or the Corporation which has been transferred from the South African Transport Services in terms of this Act and which is referred to in section 3 (3) (b) of Act No. 79 of 1984.
- (b) The reference to "State property" in section 3 (3) of Act No. 79 of 1984 shall be construed so as to include the property of the Company or the Corporation.

Amendment to the Liquor Act, 1977 (Act No. 87 of 1977)

(2) Section 209 of Act No. 87 of 1977 is amended by the substitution for paragraph (a) of subsection (2) thereof of the following paragraph:

- "(a) The provisions of this Act shall not affect the operation of any provision of the Trade Metrology Act, 1973 (Act No. 77 of 1973), or [any provision of Chapter V of the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act No. 70 of 1957)] section 14 of the Legal Succession to the South African Transport Services Act, 1989."

Application of Transport (Co-ordination) Act, 1948 (Act No. 44 of 1948)

(3) The words "a servant as contemplated in the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act No. 70 of 1957)" in section 3 (5) (b) of Act No. 44 of 1948 shall be construed as a reference to an employee of the Company.

Amendment to and Application of Finance and Financial Adjustments Acts Consolidation Act, 1977 (Act No. 11 of 1977)

- (4) (a) Section 24 of Act No. 11 of 1977 is amended by the substitution in subsection (3) for the words "Railways and Harbours Service Act, 1960 (Act No. 22 of 1960)" of the words "South African Transport Services Conditions of Service Act, 1988 (Act No. 41 of 1988)".
- (b) The various references in section 24 of Act No. 11 of 1977 to "Railway servants", "General Manager", "servants of the Administration", "servant", "servant of the Administration" and "officers of the Administration" shall be construed as references to employees of the Company or the Managing Director thereof, as the case may be.

Application of the Air Services Act, 1949 (Act No. 51 of 1949)

(5) The protection granted to the "Railway Administration" by section 20 (1), (2) and (3) of Act No. 51 of 1949 shall be extended *mutatis mutandis* to the Company as if the Company, and not the Railway Administration, provided, during the relevant periods, "a scheduled air transport service" as contemplated by that section.

Amendment to Motor Vehicle Accidents Act, 1986 (Act No. 84 of 1986)

(6) Section 10 of Act No. 84 of 1986 is amended by the substitution for paragraph (c) thereof of the following paragraph:

- "(c) suffered as a result of bodily injury to or the death of a member of the South African Police [,] or the South African Defence Force [or the South African Railways Police Force], caused by or arising from the driving of a motor vehicle in which the member was conveyed in the course of his

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employment and owned by the South African Police [.] or the South African Defence Force [the South African Transport Services]; or”.

Amendment to National Monuments Act, 1969 (Act No. 28 of 1969)

(7) Section 10A of Act No. 28 of 1969 is amended by the substitution in subsection (2) for the words “paragraph (26) of section 2 of the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act No. 70 of 1957)”, of the words “item 11 of Annexure 1 to the Legal Succession to the South African Transport Services Act, 1989”.

Amendment to Friendly Societies Act, 1956 (Act No. 25 of 1956)

(8) Section 20 (2) of Act No. 25 of 1956 is amended by the insertion after paragraph (e), of the following paragraph:

“(eA) financial instruments of whatever nature issued in accordance with the provisions of section 19 of the Legal Succession to the South African Transport Services Act, 1989;”.

Amendment to Pension Funds Act, 1956 (Act No. 24 of 1956)

(9) Section 19 of Act No. 24 of 1956 is amended by the insertion after paragraph (i) of subsection 1 of the following paragraph:

“(j) financial instruments of whatever nature issued in accordance with the provisions of section 19 of the Legal Succession to the South African Transport Services Act, 1989.”

Amendment to and Application of Pension Legislation relating to Employees of Company

- (10) (a) Any reference in the Railways and Harbours Pensions Amendment Act, 1941 (Act No. 26 of 1941), the Railways and Harbours Pensions Act, 1971 (Act No. 35 of 1971) and the Railways and Harbours Pensions for Non-Whites Act, 1974 (Act No. 43 of 1974), or in the regulations promulgated in terms thereof, to the Administration, the Railways and Harbours Administration, the General Manager or the employees of the Administration shall be construed as references to the Company, the Managing Director or the employees of the Company, as the case may be.
- (b) Any reference in the acts or regulations referred to in paragraph (a) to a period of service with the Company which is required to be completed to create entitlement to benefits, shall be construed so as to include previous unbroken service with the South African Transport Services or its predecessors.
- (c) The references in section 7 to Act No. 26 of 1941, section 4 (1), (3) and (6) of Act No. 35 of 1971 and section 3 (1) and (2) of Act No. 43 of 1974 to the “Railway Board” shall be construed as references to the Board of Directors of the Company.
- (d) Section 4 of Act No. 35 of 1971 is amended by the insertion in subsection (1), as paragraph (j) thereof, of the following paragraph:
- “(j) the administration and investment of money, which is not immediately required, and interest thereon;”.
- (e) Sections 10 and 19 of Act No. 35 of 1971 are repealed.
- (f) Section 3 of Act No. 43 of 1974 is amended by the insertion in subsection (1), as paragraph (n) thereof, of the following paragraph:
- “(n) the administration and investment of money, which is not immediately required, and interest thereon.”
- (g) Section 9 of Act No. 43 of 1974 is repealed.

Amendment to Rand Water Board Statutes (Private) Act, 1950 (Act No. 17 of 1950)

(11) Section 143 of Act No. 17 of 1950 is amended by the substitution for the words “the Railway Expropriation of Land Ordinance, 1903 (Ordinance No. 20 of 1903 (Transvaal)), or under the Railway Expropriation of Land Ordinance, 1903 (Ordinance No. 46 of 1903 (Orange Free State))” of the words “item 7 of Annexure 1 to the Legal Succession to the South African Transport Services Act, 1989”.

Amendment to Durban Borough (Extension of Area) Act, 1927 (Act No. 12 of 1927)

(12) Section 4 of Act No. 12 of 1927 is amended by the substitution for the words “Railways and Harbours Regulation, Control and Management Act, 1916” of the words “Legal Succession to the South African Transport Services Act, 1989”.

Amendment to National Supplies Procurement Act, 1970 (Act No. 89 of 1970)

(13) Section 18 of Act No. 89 of 1970 is amended by the substitution in subsection (2) (b) (iii) thereof for the words “South African Transport Services Act, 1981” of the words “Legal Succession to the South African Transport Services Act, 1989”.

Amendment to Insurance Act, 1943 (Act No. 27 of 1943)

(14) Part 1 of the Third Schedule to Act No. 27 of 1943 is amended by the insertion after item 5 of the following item 5A:

“5A. Financial instruments of whatever nature issued in terms of section 19 of the Legal Succession to the South African Transport Services Act, 1989.”

Application of Atmospheric Pollution Prevention Act, 1965 (Act No. 45 of 1965)

(15) The references to the “Minister of Transport Affairs” in section 47 (4) and (5) of Act No. 45 of 1965 shall be construed as references to the Chairman of the Company.