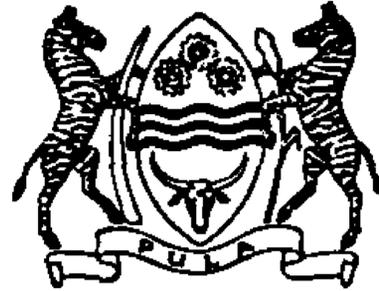


BOTSWANA RAILWAYS ACT, 1986

No. 22



of 1986

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An Act to provide for the establishment of an Organisation to be known as the Botswana Railways for the provision and operation of railway services and for matters connected therewith or incidental thereto

Date of Assent: 24.12.86

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

PART I *Preliminary*

Short title
and
commence-
ment

1. This Act may be cited as the Botswana Railways Act, 1986 and shall come into operation on such date as the Minister may, by notice published in the gazette, appoint.

Interpreta-
tion

2. In this Act, unless the context otherwise requires, —
 “contiguous railways” means any railway outside Botswana to which traffic can travel, to and from Botswana, in the same rail vehicle;
 “financial year” means the year ending on the 31st March in each year;
 “former owners” means National Railways of Zimbabwe or the Railways Unitary System Board of Management so far as they relate to assets within the borders of Botswana;
 “private siding” means any line of railway which is connected to, or is contiguous with, Botswana Railways, other than such connections at the national borders, which has been constructed on land not owned or leased by Botswana Railways, for

the specific purpose of facilitating rail transport access to premises or works situated on that land;
“railways services” means the conveyance of passengers, parcels and goods traffic by rail or road in accordance with the provisions of this Act;
“senior officer” means any employee of the Organisation who holds a position which is designated as such by the Board.

PART II *Establishment, Constitution and Membership of Organisation*

3. (1) There is hereby established a Commercial enterprise of the Government of Botswana to be known as the Botswana Railways Organisation (hereinafter referred to in this Act as “the Organisation”).

Establishment of Organisation and personality

(2) Notwithstanding any other law to the contrary, all legal proceedings by or against the Government of Botswana and related to any commercial activity for or by the Organisation may be instituted by or against the Botswana Railways Organisation in its own name as representing the Government of Botswana, and the necessary service of process therein may be effected on the General Manager of Botswana Railways appointed under section 10 of this Act.

(3) Sections 3 and 6 of the Civil Procedure (Actions by or against Government or Public Officers) Act shall not apply to actions by or against Botswana Railways.

Cap. 10:01

4. (1) There is hereby established a Board of Management (hereinafter referred to as “the Board”) which shall consist of the following members appointed by the Minister —

Composition of Organisation

- (a) the Chairman;
- (b) the General Manager of the Organisation appointed under section 10, ex officio; and
- (c) not less than 5 or more than 9 other persons who in the opinion of the Minister have knowledge and experience likely to contribute to the successful management of the Organisation.

(2) A person shall not be competent to be appointed or to act as a member of the Board if —

- (a) he is a member of the National Assembly;
- (b) he is an employee of the Organisation;
- (c) he has been declared insolvent or bankrupt under any law in any country and has not been discharged, or has made a composition with his creditors and has not paid his debts in full; or
- (d) he has been convicted of any offence involving fraud.

Resignation
and removal
from office

5. (1) Any member of the Board, other than the General Manager, may resign his membership of the Board by notice in writing addressed to the Minister.

(2) A member of the Board may be removed from membership thereof if he —

- (a) ceases to hold the office by virtue of which he was appointed;
- (b) becomes of unsound mind;
- (c) is declared insolvent or bankrupt under any law in force in any country;
- (d) suspends payment of his debts or compounds with his creditors;
- (e) is absent from three consecutive meetings of the Board without such reason as appears to the Minister to be sufficient;
- (f) is sentenced to imprisonment without the option of a fine or is convicted of an offence involving dishonesty;
- (h) in the case of a person possessed of professional qualifications, is disqualified or suspended, otherwise than at his own request, from practising his profession in Botswana or in any other country by order of any competent authority made in respect of him personally.

Tenure of
office

6. (1) A member of the Board, other than the Chairman and the General Manager, shall hold office for such period, not exceeding four years, as may be specified in the notice appointing him, and on the expiration of such period shall be eligible for reappointment:

Provided that the appointing members of the Board, the Minister shall specify such periods of appointment that the periods of appointment of not more than one-third of the members shall expire in any one year.

(2) The Chairman of the Board shall hold office as Chairman for a period of three years, and may be reappointed for any further periods of three years.

(3) The Board shall once in every year elect from among its members (other than the ex officio member) a Vice-Chairman who shall hold office as Vice-Chairman for a period of one year.

(4) Subject to the provisions of this Act, where any member of the Board is incapacitated by absence from Botswana, or illness or any other sufficient cause, from performing the duties of his office, the Minister shall appoint another person to hold office in his place until the incapacity of that person has terminated or until the term of office of such member expires, whichever first occurs.

Payment of
members

7. The Board shall pay to the members thereof such remuneration, fees and allowances for expenses as may be approved by the Minister.

PART III *Meetings and Proceedings of Board*

Meetings

8. (1) The Board shall meet for the discharge of its functions at such times and places as the Chairman may appoint, so however that the Board shall meet at intervals not exceeding three months.

(2) The Chairman or in his absence the Vice-Chairman may, and shall on the request in writing of not less than two members of the Board, call an extraordinary meeting of the Board at such time and place as he may determine.

(3) The Chairman or, in his absence, the Vice-Chairman shall preside at every meeting of the Board.

(4) In the absence of both the Chairman and the Vice-Chairman the members present shall elect one of their number to preside at the meeting.

(5) The quorum at any meeting of the Board shall be not less than one-half of the members of the Board:

Provided that the presence of the General Manager shall not count towards the constitution of the quorum.

(6) All questions proposed at a meeting of the Board shall be determined by a majority of the members present and voting, and, where the votes are equal, the Chairman or the person presiding shall have a second or a casting vote.

(7) Any member of the Board who has an interest, or whose spouse has an interest, in any company or undertaking with which the Board proposes to make a contract or, has an interest in any contract which the Board proposes to make, shall disclose the nature of his interest, and shall not vote or take any part in the proceedings of the Board relating to such contract.

(8) The General Manager shall, unless the Board in any particular instance decides otherwise, be entitled to attend the meetings of the Board and participate in the discussions without a vote.

(9) The Board may, and shall if the Minister thinks fit, request the attendance of any person to act as adviser at any meeting of the Board, and that person while so attending shall have all the powers of a member except that he shall not vote on any question and his presence at the meeting shall not count towards the constitution of a quorum.

(10) The validity of any act or proceedings of the Board shall not be affected by any vacancy among its members or by any defect in the appointment of a member thereof.

(11) The Board may from time to time make standing orders providing for the regulation of —

- (a) the meetings of the Board;
- (b) the conduct of its business and other operations in carrying out its functions; and
- (c) the duties of its officers, employees and agents.

Signification
of
documents

9. All documents made by, and all decisions of, the Board may be signified under the hand of the Chairman of the Board, the General Manager or any member or senior officer of the Organisation generally or specially authorized in that behalf.

PART IV Officers, Employees and Agents of Organisation

Appointment
of officers
and
employees

10. (1) The Organisation shall have a General Manager who shall be appointed by the Minister upon such terms and conditions as may be determined by the Board.

(2) No person shall be appointed as the General Manager of the Organisation unless he is qualified by experience and training and has demonstrated that he is competent to manage the business of the Organisation.

(3) The General Manager of the Organisation shall, subject to such directions on matters of general policy as may be given by the Board, be charged with the direction of the Business and administration of the Organisation, and with the control of its employees.

(4) The General Manager may resign from office by notice in writing addressed to the Minister, and may be removed from office by the Minister.

(5) The General Manager may delegate to any senior officer of the Organisation the exercise of any powers which he is authorised to exercise under this Act.

(6) (a) The Board shall on consideration of the recommendations of the General Manager, from time to time determine the staff deemed necessary for the proper discharge of the functions of the Organisation and the terms and conditions of employment.

(b) The appointment, dismissal and discipline of all persons to or from positions designated by the Organisation as held by senior officers shall be made by the Board on consideration of recommendations of the General Manager.

(c) The appointment, dismissal and discipline of all other staff shall be made by the General Manager or such senior officers as he may delegate to perform this function.

(7) The Board may —

(a) grant pensions, gratuities or retiring allowances to any officer or employee and may require such officer or employee to contribute to any pension or contributory scheme;

(b) for the benefit of its officers and employees, establish and make contributions to any pension or superannuation fund or medical fund; and

(c) from time to time appoint and employ upon such terms and conditions as it may think fit such agents and contractors as it may deem necessary.

(8) Public officers from other Ministries or Departments may be transferred or seconded to the Organisation or may with the consent of their supervisors otherwise give assistance thereto.

(9) Officers and employees of the Organisation shall in so far as it is not inconsistent with the provisions of this Act be public officers.

(10) Officers and employees of the Organisation may become members of an appropriate Trade Union.

11. The Board may, by resolution, delegate to any committee of the Organisation the exercise of any of the powers which the Organisation is authorised by this Act to exercise either generally or in any particular case.

Delegation
to
committee

PART V Functions, Powers and Duties of Organisation

12. (1) Subject to subsections (2) and (3), the functions of the Organisation shall be —

Functions
and powers

- (a) the provision of efficient and cost-effective railways transport over all its railways within the borders of Botswana;
- (b) the provision of an efficient and cost-effective system of public transport of goods and passengers by road in so far as the Minister considers it to be necessary or desirable;
- (c) the maintenance of existing connections with the adjoining railway systems of other railway administrations; and
- (d) to perform such other activities as may appear to the Organisation to be conducive and incidental to the attainment of all or any of its objectives under this Act or any other law.

(2) The Organisation shall have no direct responsibility for the maintenance of connections with, or responsibility for providing services to private sidings, other than duties and obligations arising from an agreement entered into with the owner of any such private siding.

(3) The Organisation shall not, without the authority of the Minister, construct a new line of railway at any point outside the recognised railway reservation not previously served by the Organisation, nor close and remove any existing line of railway other than a connection to a private siding.

(4) The Organisation shall have all powers necessary or convenient for the performance of its functions and duties and without prejudice to the generality thereof, shall have the power, on behalf of the Government, to —

- (a) acquire, maintain, improve and operate the railways at present existing within Botswana or outside Botswana as may be directed by the Government from time to time.
- (b) acquire, maintain and use any kind of property, right or privilege and dispose of the same to any person other than a

member, officer or employee of the Organisation, or any agent or contractor, appointed or employed by the Organisation.

- (c) enter into agreements with the management of any railway administration on —
 - (i) common standards of design and maintenance of rolling stock which might be interchanged between the systems;
 - (ii) the establishment of tariffs for all classes of traffic interchanged between the system; and
 - (iii) the establishment of compatible systems of documentation and accountancy for all matters;
- (d) enter into such contracts as may be necessary for the performance of its functions and duties;
- (e) construct or cause to be constructed such works, houses, offices and other buildings and structures as it may deem necessary or expedient for the performance of its functions and duties;
- (f) purchase, take on lease or otherwise acquire or construct or cause to be constructed such tools, appliances, machinery, plant and equipment as it may deem necessary or expedient for the performance of its functions and duties;
- (g) sell, exchange, lease, dispose of, turn to account or otherwise deal with any of its assets or any part thereof, whether movable or immovable, not required for its purposes, provided that the Organisation may not sell any of its immovable property without the approval in writing of the Minister for the time being responsible for finance;
- (h) invest from time to time, in such manner as it may deem fit, such moneys held by it as may be surplus to its immediate requirements, subject to the approval in writing of the Minister for the time being responsible for finance;
- (i) insure with any company or person against any losses, damages, risks or liabilities which the Organisation may incur;
- (j) purchase or sell any materials and stores used in the performance of its functions; and
- (k) carry on any activity which is reasonably requisite or convenient for or in connection with the discharge of its functions under this Act.

Exclusive
privilege of
Organisation

13. (1) The Organisation shall have the exclusive privilege of operating railway services in Botswana.

(2) The Minister may, after consultation, with the Board permit, any person to construct a private siding.

Co-operation
with
authorities

14. In the discharge of its functions the Organisation shall co-operate with local and other public authorities, including departments and agencies of the Government, and shall consult

with local authorities in matters of concern to the Organisation which affect their interests.

15. With a view to facilitating present or future research or planning the Organisation shall keep full and accurate records of all its operations and shall have power to engage in research and to assist others to engage in research in respect of any matter relating to its functions, and to publish such records and the results of any such research.

Research
and
records

16. The Minister may, after consultation with the Board, give to the Organisation such directions of a general or specific character as to the exercise and performance of its powers in fulfilling its functions as are necessary as a matter of public policy and as are not inconsistent with this Act or with the contractual or other legal obligations of the Organisation, and the Organisation shall give effect to any such direction.

Power of
Minister
to give
directions

PART VI *Finance*

17. (1) The Organisation shall conduct its affairs on sound commercial lines and, in particular, so carry out its functions under this Act and so prescribe the charges payable in respect of the provision by the Organisation of services for the conveyance of goods and passengers as to ensure that its revenues are sufficient to produce on the fair value of its assets a reasonable return measured by taking its net operating income as a percentage of the fair value of its fixed assets in operation plus an appropriate allowance for its working capital.

Principles
of
financial
operations

(2) For the purposes of this section "net operating income" means the amount of income remaining after subtracting from total operating revenues all charges which in accordance with generally acceptable accounting principles are chargeable to revenue accounts, including appropriate provisions for depreciation of assets, adequate maintenance, but before deducting interest and other charges on borrowing or taking into account non-operating income expenditure.

(3) In determining what constitutes a reasonable return, all pertinent economic and financial considerations shall be taken into account, which shall include but not be limited to the need for net operating income in an amount sufficient —

- (a) to meet interest payments on borrowings;
- (b) to provide for repayments to be made each year in respect of loans incurred by the Organisation to the extent to which such repayments exceed the year's provision for depreciation charged to revenue accounts;
- (c) to provide a reasonable proportion of the funds needed for expanding the Organisation's activities and improving its services; and

(d) to provide reserves for replacement, expansion or other purposes if and to the extent to which the Organisation deems it necessary to establish such reserves.

Fixing of
tariffs and
surplus funds

18. (1) The Board shall, with the approval of the Minister, which approval shall not unreasonably be withheld, prescribe the tariffs at which it provides services for the conveyance of goods and passengers so as to ensure that it is able to comply with the provisions of section 17.

(2) The Board may prescribe different tariffs or methods of charge for different classes or categories of service and for different areas or places.

(3) Notwithstanding subsection (1), the Organisation may, where special circumstances exist and with the consent of the Minister which consent shall not be unreasonably withheld, enter into an agreement with any person providing for special tariffs on a commercial basis in respect of that agreement.

(4) Any surplus funds of the Organisation shall be invested or otherwise dealt with in accordance with the directives given by the Minister for the time being responsible for finance.

Borrowing
powers

19. (1) In order to enable the Organisation to discharge its functions under this Act and to meet its obligations it may borrow, on such terms and in such currencies as may be agreed between it and any lender, such sums as it may require, subject to the approval of the Minister for the time being responsible for finance.

(2) The Organisation may charge its assets, undertakings and revenues with the repayment of any money borrowed together with interest thereon and may issue debentures, bonds or other securities in order to secure the repayment of any money borrowed together with interest thereon and may do all other things necessary in connection with or incidental to such borrowings as are authorised by this section, subject to the approval of the Minister for the time being responsible for finance.

Vesting of
property in
Organisation

20. (1) Any properties, assets, rights, debts, liabilities and obligations of the Government or former owners and the benefit and burden of all contracts made by or on behalf of the Government or the former owners which are part of or concern or relate to the railways may, with the consent of the Board, be transferred to and vest in the Organisation as hereinafter provided on terms and conditions agreed to by the Organisation and any other party.

(2) The Minister may from time to time, by notice published in the Gazette, designate for the purposes of this section properties, assets, rights, debts, liabilities and obligations of the Government or former owners and contracts made by or on behalf of the Government or former owners which are part of, concern or relate to the railways, and as from the date specified in any such

designation the properties, assets, rights, debts, liabilities and obligations and the benefit and burden of the contracts so designated shall vest in the Organisation.

(3) (a) For the purposes of this subsection "the appropriate date" means, in respect of any loan agreement made between the Government and any person whereby money was or is to be borrowed by the Government and used for or in connection with the railways, the date of the vesting of such loan agreement in the Organisation by virtue of the foregoing provisions of this section.

(b) The Organisation shall pay to the Ministry or Department concerned, in such manner and on such date or dates as the Minister may, with the concurrence of the Organisation and the Minister for the time being responsible for finance, from time to time specify, any amount expended or advanced by any Ministry or Department on or in connection with the railways comprising —

- (i) all amounts repaid in respect of capital or interest by the Government to any person before the appropriate date under any loan agreement to which paragraph (a) applies;
- (ii) all amounts disbursed or to be disbursed by any Ministry or Department in repayment of any other loan raised or to be raised by any Ministry or Department and interest thereon to the extent to which such loan has been or will be applied to the railways which, before the date specified in a designation pursuant to subsection (2), had not been off-set by an amount or amounts credited to the consolidated Fund for that purpose;
- (iii) amounts equal to the outstanding debit balance of any advances made by any Ministry or Department and all costs incurred by that Ministry or Department as a result of making such advances;
- (iv) any other amounts paid or to be paid by any Ministry or Department which, before the date specified in a designation pursuant to subsection (2), had not been off-set by an amount or amounts credited to the Consolidated Fund for the purpose.

(4) If, within one month from the date specified by the Minister under subsection (3) (b) for the payment of any amount payable by the Organisation to any Ministry or Department under that subsection, the Organisation fails to pay such amount, it shall pay interest thereon as from the date specified as aforesaid at such rate or rates as the Minister may, with the concurrence of the Minister for the time being responsible for finance, from time to time determine.

21, (1) The Organisation shall keep proper accounts and other records in relation thereto, and shall prepare in respect of each financial year a statement of accounts showing in detail the assets and liabilities (real and contingent) and income and expenditure of the Organisation in a form which shall conform with the best commercial accounting standards applicable to the provision of services.

(2) The accounts of the Organisation in respect of each financial year shall, within 4 months or such extended time after the end thereof as the Minister may direct, be audited by the Auditor-General or any auditor appointed by the Auditor-General (hereinafter referred to as "appointed auditor").

(3) The Auditor-General or any appointed auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which he deems it pertinent to comment, whether or not —

- (a) he has received all the information and explanations which, to the best of his knowledge and belief, were necessary for the performance of his duties as auditor;
- (b) the accounts and related records of the Organisation have been properly kept;
- (c) the Organisation has complied with all the financial provisions of this Act with which it is the duty of the Organisation to comply; and
- (d) the statement of accounts prepared by the Organisation was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Organisation.

(4) The report of the Auditor-General or the appointed auditor and a copy of the audited accounts shall, within 7 days of the completion thereof, be forwarded to the Minister and to the Organisation.

(5) The Minister shall, within 30 days of receiving the report and a copy of the audited accounts, lay such report and accounts before the National Assembly.

PART VII *General*

22. (1) The Board shall, within a period of 6 months after the end of the financial year or within such longer period as the Minister may approve, submit to the Minister a comprehensive report on its operations during such year together with the auditors' report and the audited accounts as provided for in section 21, and the Board shall publish them in such manner as the Minister may specify.

(2) The Minister shall, within 30 days of his receiving the Board's report, lay such report before the National Assembly.

<p>23. For the purposes of any written law for the time being in force relating to the compulsory acquisition of land for public purposes, the functions and operations of the Organisation shall be deemed to be public purposes.</p>	<p>Compulsory acquisition of land</p>
<p>24. If the operations of the Organisation make necessary the resettlement of any person dwelling upon any communally owned land, the terms of such resettlement shall be subject to the agreement of the Government and of the local authority of the area concerned.</p>	<p>Resettlement measures</p>
<p>25. (1) In the exercise of its powers under this Act in relation to the execution of works or interference with property the Organisation shall cause as little detriment and inconvenience and do as little damage as possible, and shall make full compensation to all local and other authorities and other persons who have sustained loss or damage for all loss or damage sustained by them by reason or in consequence of the exercise of such powers and, in default of agreement between the parties, the amount and application of such compensation shall be determined by arbitration in accordance with the provisions of the Arbitration Act.</p>	<p>Compensation for loss or damage</p>
<p>(2) For the purpose of such arbitration the parties shall be deemed to be parties to a submission in which the reference is to two arbitrators.</p>	<p>Cap. 06:01</p>
<p>26. The Minister may, for purposes associated with the administration of this Act, require the Board to provide him with estimates of the Organisation's future revenue and expenditure, and with such other information relating to its activities and operations, including books of accounts, records, documents and agreements relating to the activities of the Organisation.</p>	<p>Power to call for information</p>
<p>27. The Board may make bye-laws or rules for any purpose connected with its powers, functions and duties under this Act and may impose penalties for breach of any such bye-laws or rules. Such bye-laws or rules shall come into force upon approval by the Minister.</p>	<p>Power to make bye-laws</p>
<p>28. No matter or thing done by any member of the Organisation or by any officer or employee of the Organisation shall, if the matter or thing is done <i>bona fide</i> for the purpose of executing any provision of this Act, render such person or any person acting by his direction personally liable to any action, claim or demand whatsoever.</p>	<p>Protection from personal liability</p>
<p>29. The Minister may, after consultation with the Board, make regulations providing for any matter which under this Act is to be provided for by regulation or which otherwise relates to the administration of the Organisation.</p>	<p>Power to make regulations</p>
<p>30. (1) Unless the contrary intention is indicated by the Board, every member of the staff of the Department of Railways shall be deemed to have been duly appointed under this Act.</p>	<p>Transitional provisions</p>
<p>(2) Nothing in this Act shall be taken to effect any alteration in</p>	

the terms of a contract subsisting immediately before the commencement of this Act or to authorise the making of any such alteration without the consent in writing of all parties bound by the contract.

Applications
of certain
laws

31. (1) Any written laws relating to railways shall, to the extent that they are not inconsistent with the provisions of this Act, continue to be in force.

(2) Any powers contained in any written law which were exercisable by any predecessor railway authority or employees of such railway authority shall be exercisable by the Organisation and its employees and any reference to any predecessor railway authority in any such written law shall be deemed to be reference to Botswana Railways.

Repeal of
Act 12
of 1984

32. The Botswana Railways Act, 1984, is hereby repealed.

PASSED by the National Assembly this 11th day of December, 1986.

C.G. MOKOBI,
Clerk of the National Assembly.