

BOTSWANA RAILWAYS (AMENDMENT) ACT, 2004



No. 22

of 2004

ARRANGEMENT OF SECTIONS

SECTION

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An Act to amend the Botswana Railways Act

Date of Assent: 25th August, 2004

Date of Commencement: 3rd September, 2004

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Botswana Railways (Amendment) Act, 2004. Short title
2. The Botswana Railways Act (hereinafter referred to as “the Act”) is amended in section 2 thereof, by inserting, immediately after the definition of “private siding”, the following new definition —
“railway jurisdiction” means any property of the Organization and includes any of the following which belong to the Organization, namely, buildings, offices, premises, warehouses, trains, locomotives, carriages, wagons, railway yards, railway tracks and the adjoining land.” Amendment of section 2 of Cap. 70:01
3. Section 3 of the Act is amended by substituting, for subsection (2) thereof, the following new subsection —
“(2) Notwithstanding any other law to the contrary, all legal proceedings by or against the Organization shall be instituted by or against the Botswana Railways in its own name, and the necessary service of process shall be effected on the general manager of the Organization.”. Amendment of section 3 of the Act

Amendment
of section 4 of
the Act

4. Section 4 of the Act is amended by substituting, for paragraph (d) of subsection (2) thereof, the following new paragraph —

“(d) he or she has been convicted of an offence involving dishonesty, or commits an act of misconduct which, in the opinion of the Minister, renders him or her unfit to hold office as a member of the Board.”.

Amendment
of section 8 of
the Act

5. Section 8 of the Act is amended by substituting, for subsection (7) thereof, the following new subsection —

“(7) Where a member is present at a meeting of the Board or any committee of the Board at which any matter which is the subject of consideration, and in which matter the member is directly or indirectly interested in a private capacity is to be discussed, he or she shall forthwith, after the commencement of the meeting, disclose such interest to the Board or committee of the Board, as the case may be, and shall not, unless the Board or committee otherwise directs, take part in any consideration or discussion of, or vote on, any question with respect to the matter.”.

Amendment
of section
10 of the Act

6. Section 10 of the Act is amended by —

(a) substituting, for subsection (1) thereof, the following new subsection —

“(1) The Board shall, with the approval of the Minister, appoint a general manager of the Organization on such terms and conditions as the Board may determine.”; and

(b) deleting subsection (11) thereof.

7. Section 12 of the Act is amended —

(a) by substituting, for subsection (1) thereof, the following new subsection —

“(1) Subject to subsections (2) and (3), the functions of the Organization shall be to —

- (a) provide efficient and cost effective railway transport over all its railways within the borders of Botswana;
- (b) generate income from the commercial use of, and exploitation of, any asset, including land or immovable property, owned or vested in the Organization;
- (c) issue, with the prior approval of the Minister responsible for finance, and notwithstanding the provisions of any written law, any financial instruments of whatever nature including stock, securities, bills, promissory notes, debentures, debenture stock, bonds, annuities and negotiable certificates of deposit;
- (d) keep a register of issues and transfers of financial instruments issued under this subsection;
- (e) repurchase its own or other financial instruments; and
- (f) perform such other activities as may appear to the Organization to be conducive and incidental to, the attainment of all or any of its objectives under this Act or any other law.”;

Amendment
of section 12
of the Act

(b) by the insertion, immediately after subsection (1) thereof, of the following new subsection —

“(1A) The following conditions shall apply to financial instruments issued under subsection (1) —

- (a) the provisions of the Companies Act, in respect of debentures, shall not apply to the financial instruments referred to ;
- (b) the financial instruments shall, where applicable, be traded in the same markets in which similar financial instruments issued by the Government or other statutory bodies are being traded; and
- (c) where applicable, such financial instruments may be listed in the stock exchange in the same manner and subject to the same requirements and procedure as those given to financial instruments issued by the Government or other statutory bodies.”;

(c) by substituting, for subsection (3) thereof, the following new subsection —

“(3) The Organization shall not, without the approval of the Board after consultation with the Minister, construct a new line of railway at any point outside the recognised railway reserve not previously served by the Organization, neither shall it close nor remove any existing line of railway other than a connexion to a private siding.”;

(d) in subsection (4), by —

(i) substituting, for paragraph (b) thereof, the following new paragraph —

“(b) acquire, maintain and use any kind of property, right or privilege and dispose of the same by public auction or such other method as the Board may approve, to any person;” and

(ii) inserting, immediately after paragraph (b) thereof, the following new paragraph —

“(c) form one or more companies or acquire shares, for the purpose of restructuring its activities, carrying on business or carrying out any purpose, which it may carry out in terms of this Act.”.

8. Section 13 of the Act is amended by substituting, for subsection (2) thereof, the following new subsection —

“(2) The Board may permit any person to construct a private siding.”.

Amendment of section 16 of the Act

9. Section 16 of the Act is amended by substituting, therefor, the following new section —

“Powers of Minister to give directions

16. The Minister may, after consultation with the Board, give, to the Organization, such directions of a general or specific nature as to the exercise and performance of its powers in fulfilling its functions as are necessary as a matter of public interest, and as are not inconsistent with the legal obligations of the Organization, and the Organization shall give effect to any such direction.”.

Amendment of section 18 of the Act

10. Section 18 of the Act is amended by substituting, for subsection (3) thereof, the following new subsection —

“(3) Notwithstanding the provisions of subsection (1), the Organization may, where special circumstances exist, enter, with any person, into an agreement providing for special tariffs on a commercial basis in respect of that agreement.”.

Amendment of the Act

11. The Act is amended by inserting, immediately after section 26 thereof, the following new sections —

“Confidentiality

26A. (1) An officer of the Organization, a member of the Board, or an auditor appointed under section 21(2), shall not disclose any confidential information relating to the affairs of the Organization, which he or she acquired during the performance of his or her duties under this Act.

(2) Notwithstanding the provisions of subsection (1), an officer of the Organization, a member of the Board, or an auditor appointed under section 21(2), may disclose information relating to the affairs of the Organization acquired during the performance of his or her duties —

(a) for the purposes of, and within the scope of, his duties under this Act; or

(b) when required to —

(i) by an order of court,

(ii) under any written law, or

(iii) in the investigation of an offence.

(3) Every member of the Board and employee of the Organization shall take and subscribe to an oath of secrecy in such form as the Minister may prescribe.

(4) A person who contravenes subsection (1), shall be guilty of an offence and shall be liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 1 year, or to both.

Powers of
arrest

26B. (1) Any security officer employed by the Organization, may arrest any person who commits an offence under this Act within the railway jurisdiction.

(2) An officer effecting an arrest in terms of subsection (1), shall forthwith deliver the person arrested, or cause that person to be delivered, to the police to be dealt with according to law.”.

PASSED by the National Assembly this 28th day of July, 2004.

A. MATLHAKU,
Clerk of the National Assembly.