

REVIEW OF THE UGANDA RAILWAYS CORPORATION ACT, CAP. 331

STUDY REPORT

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FOREWORD

Railways begun operating in Uganda in 1903 when the Uganda Railways reached Kisumu and transformed transport between the East African coast to landlocked Uganda. The railway became a vital link between Uganda and the coast, opening up the Ugandan hinterland and facilitating export of Uganda's exports. However, much has changed since those early days. As more air, land and sea transport options have developed, the role of rail has changed. Although railways in Uganda still play a significant role particularly in transportation of Uganda's export and imports, they are not as successful. Changing modal shares with the decline of rail in part reflect inherent advantages of other transport modes.

The Government of Uganda through the Uganda Law Reform Commission, with support of the Justice Law and Order Sector has completed a study on the review of the Uganda Railways Corporation Act, Cap. 331. The review is intended to transform the railway industry to improve performance of the industry and boost Uganda's market competitiveness by reducing the costs of doing business.

As a result of this study, the Commission has made recommendations for reform aimed at revitalizing the railway industry through strategic policy interventions. Through implementation of the proposed interventions, the Commission hopes that the new regulatory framework for railways will reposition the Uganda Railways for competitiveness and facilitate resurgence of Uganda Railways to a more efficient market-oriented industry with a more commercial outlook and recover rail's modal share of the national transport market.



Dr. Pamela Tibihikirra-Kalyegira
Chairperson

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ACRONYMS

AAIB	Air Accidents Investigation Branch
AAR	Association of American Railroads
ADR	Alternative Dispute Resolution
BR	British Rail
CNR	Canadian National Railways
COSASE	Committee on Commissions, Statutory Authorities and State Enterprises
DRC	Democratic Republic of Congo
EAC	East African Community
EARMP	East African Railways Master Plan
ERTMS	European Railway Traffic Management System
EU	European Union
HMRI	Her Majesty Railway Inspectorate
HSE	Health & Safety Executive
IM	Infrastructure Manager
INTP	Integrated National Transport Policy
IPO	Initial Public Offering
JLOS	Justice Law and Order Sector
KCCA	Kampala City Council Authority
MoJCA	Ministry of Justice and Constitutional Affairs
MoFPED	Ministry of Finance Planning and Economic Development
NCIP	Northern Corridor Integration Projects
NEMA	National Environmental Authority
NDP II	National Development Plan II
NPA	National Planning Authority
NTCA	Northern Corridor Transit Area
OPM	Office of the Prime Minister
OSJD	Organization for Cooperation of Railways
PPP	Public Private Partnership
PSOs	Public Sector Obligations
RAIB	Rail Accident Investigation Branch
RBs	Regulatory Bodies
RFD	Rail Flaw Detection
RSR	Railway Safety Regulator
RVR	Rift Valley Railways
SADC	Southern Africa Development Community
SGR	Standard Gauge Railway
SMS	Safety Management System
TWG	Technical Working Group
UIC	International Union of Railways
UK.	United Kingdom
UNRA	Uganda National Road Authority
URC	Uganda Railways Corporation

EXECUTIVE SUMMARY

This report presents the findings and recommendations from review of the Uganda Railways Corporation Act, Cap. 331 (URC Act). The study was intended to make recommendations for reform of the URC Act for a modern management and regulatory model railway system that will facilitate the socio-economic investment climate and boost Uganda's market competitiveness by reducing the costs of doing business.

The study was undertaken with support from the Justice Law and Order Sector (JLOS). It sought to address the challenges associated with the laws relating to the railway transport sector, particularly, issues that require regulation to facilitate effective and reliable administration of railway transport. The study sought to devise solutions to the out-dated regulatory framework; management and regulatory gaps in the law; absence of alternative dispute resolution mechanisms for railways matters; and lack of an accident and incident investigation body.

The study was undertaken using qualitative methods to uncover trends in thought and opinion as well as to get insights into the problems and issues surrounding the railway service industry in Uganda. The study population comprised a range of stakeholders purposively sampled from actors and in the railway sector in Uganda.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Findings

1. The roles of the major players in rail transport, i.e. the Uganda National Road Authority, Uganda Railways Corporation and Local Government authorities are not clear.
2. Section 11 of the Act provides that the board of directors shall have meetings once every month. This is not practical or realistic as it does not give room for the managers to implement previous decisions.
3. The URC Act is outdated and is in need of amendment. The fines are not in currency points and the penalties are not deterrent.
4. Reform of the URC Act should take into consideration Uganda's international and regional obligations and commitments.
5. Uganda's vertically integrated railway is restrictive to private sector participation. A vertical and horizontal separation railway model would enhance private sector involvement in the railway sector of Uganda
6. There is need for an independent regulator to control and regulate matters relating to safety and economic regulation, competition, abuse of monopoly power and protection of the interests of consumers.
7. The railway regulator should be mandated to oversee dispute resolution for the railway subsector.
8. There is need for confidence in the safety of the railway industry. This can be fostered through establishment of a body to investigate railway accidents and incidents.

Recommendations

9. The Act should be amended to provide for revised penalties in relation to offences in sections 80 to 89 of the Act with a purpose to make the offences deterrent.

10. The Act should include new provision on offences like railway trespass, fare evasion, assault of staff, damaging trains and endangering safety of rail users and intoxication or drunkenness of passengers and employees.
11. The Act should establish a railway regulator to oversee safety, economic regulation and the regulation of competition.
12. Uganda should adopt the vertical separation and/or horizontal separation model for railway transport. In the case of low traffic density, a vertically separated system is cheaper than a vertically integrated system but in the case of higher traffic density, the integrated system may be better.
13. Forms of private participation such as Public Private Partnerships, rail concessions and franchises, contracting and outsourcing, service management contracts, private railways should be embraced and the law should provide a legal framework for the participation of the private sector.
14. A gradual approach to reform should be implemented so as to deliver better results on the cost side.
15. The law should specifically provide for the adoption and use of alternative dispute resolution mechanisms like arbitration, mediation, negotiation and conciliation for addressing complaints or disputes arising from operation of railway transport in Uganda.
16. The rail regulator should oversee the railways sector's dispute resolution mechanism.
17. A rail accident investigative body should be created. The objective of the investigations should be the investigation of accidents or incidents. It should not be the purpose of such investigations to apportion blame or liability.
18. The Minister in charge of railways should appoint the chief inspector of rail accidents, inspectors of rail accidents and other the staff of the investigative body. The body shall report to the Minister.

CHAPTER ONE INTRODUCTION AND BACKGROUND TO THE STUDY

1.0 Introduction

The Uganda Law Reform Commission “the Commission”, in line with her Constitutional mandate and the Uganda Law Reform Commission Act¹ undertook a study to review the Uganda Railways Corporation Act, Cap. 331 (URC Act) with a view to making the law responsive to the prevailing dynamic needs of Uganda which is characterized by rapid economic, social and cultural developments.

The review of the URC Act is intended to enable a robust socio-economic investment climate that boosts Uganda’s market competitiveness by reducing the costs of doing business nationally, regionally and internationally.

Efficient transport is a critical component of economic development, globally and nationally. Transport availability affects global development patterns and can be a boost or a barrier to economic growth within individual nations. Transportation investment links factors of production together in a relationship between producers and consumers to create a more efficient division of production, leverage geographical comparative advantage, and provide the means to expand economies of scale and scope.² A robust railway transport sector would ensure cheap and timely movement of individuals, raw materials and products within Uganda and across the East African region, hence making Uganda a more attractive investment destination.

This report highlights the legal and regulatory challenges that stifle the railway sector in the country and examines emerging issues which pose challenges to implementation of the URC Act which was enacted 27 years ago. The report highlights reforms of the railways sector in other countries and regions and makes proposals for reform of the URC Act.

1.2. Background to the study

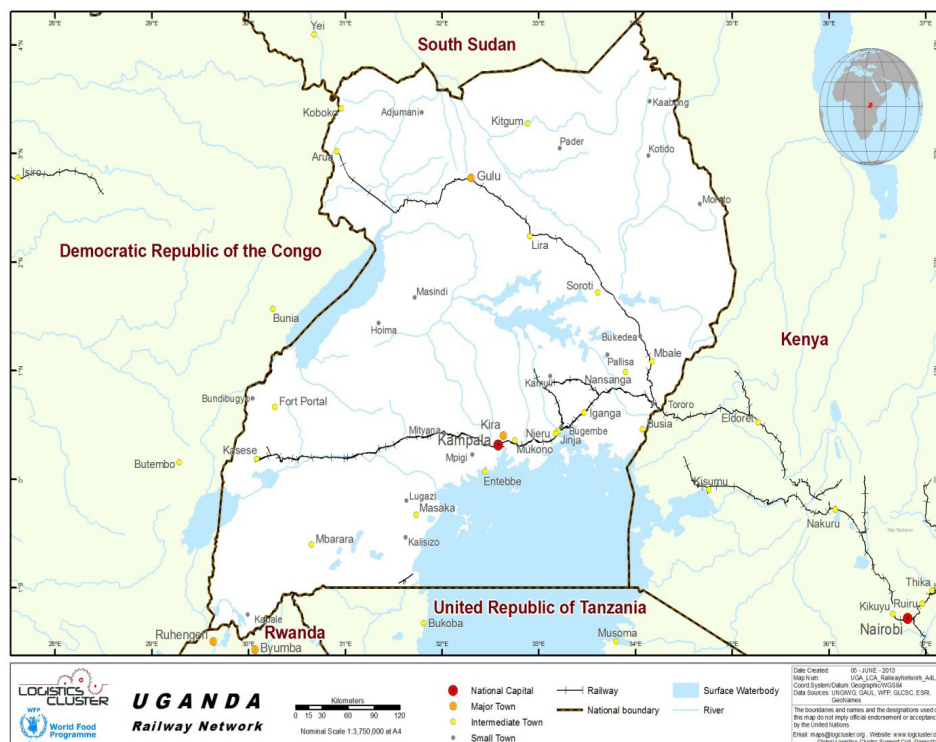
1.2.1 Origins of the Uganda Railways

Construction of the Uganda Railways commenced in 1896 under the management of the British colonial government agent, the Imperial British East Africa Company (IBEAC). The purpose for its construction was to link raw material production centres to markets by creating effective and efficient transportation of raw materials out of Uganda and manufactured British goods into Uganda.

1 Article 248 of the 1995 Constitution. s. 10 of the Uganda Law Reform Commission Act, Cap 25 gives the Commission the mandate to among other things review and reform the existing laws of Uganda to make the laws responsive to the changing needs of Ugandans.

2 World Bank. Railway reform: toolkit for improving rail sector performance. 2nd Ed. 2017. pg. 2.

Uganda's present-day Railway Network Map



1.2.2 Uganda Railways Corporation

Historically, rail services were provided in Uganda, Kenya and Tanzania by the East African Railway Corporation and Harbors Corporation (EAR&H). The East African Railways and Harbours Corporation (EAR&H) is a defunct company that operated railways and harbours in East Africa from 1948 to 1977.³ Following the collapse of the East African Community (EAC) in 1977, the Uganda Railway Corporation (URC) was formed to provide the services previously supplied by the Community.⁴

The enactment of the Uganda Railways Corporation Act of 1992 repealed the Uganda Railways Corporation Decree of 1977. Governing provisions of the East African Railways Act were consolidated into the enacted URC Act which established the URC. The URC Act provides the objectives of the Corporation whose mandate is to construct, operate and maintain railway, marine and road services for carriage of passengers and goods both in and outside Uganda. The URC Act also provides the functions of URC, its policy and management structures; the finances of the Corporation and its legal rights and obligations in relation to other persons. The URC Act establishes the URC as an autonomous agency to handle the responsibilities related to railway transport both in Uganda and in the East African region.

1.2.3 Current status of Uganda Railways

The transport sector is one of the most crucial sectors in Uganda since it directly adds value to the productivity of every other sector. According to statistics, out of the total of 1,266km rail network in Uganda, only 330km is operational.⁵ The Uganda railways transport system

3 https://en.wikipedia.org/wiki/East_African_Railways_and_Harbours_Corporation

4 The World Bank. Uganda. Transport Sector Memorandum. 1983. pg. 10.

5 Uganda Railway Corporation. How the Uganda Railway Collapsed. The New Vision. 21st February 2012. pg. 39.

comprises 1,250Km of meter gauge track running from Malaba to Kampala (250Km), Kampala to Kasese (344Kms), Tororo to Pakwach (500km), Busoga loop line (144km) and spur lines to Jinja and Port Bell Ferry terminal (12Km).⁶

From the 1970's onwards, the railway experienced increasing problems, as traffic fell away, finances came under increasing stress and the condition of track and rolling stock deteriorated.⁷ Prior to letting of the concession in 2006, URC had for years experienced serious operating and financing problems. These included the following:

- (i) Border procedures involving handover of cargo to Kenya Railways at Malaba or Kisumu and the Tanzania Railways at Mwanza;
- (ii) Lengthy customs procedures and hours of operation not consistent with 24 hours seven days a week railway service;
- (iii) High transit times relative to competing truck transportation;
- (iv) Security and integrity of cargo;
- (v) High turnaround times, particularly in ports where URC has no control;
- (vi) shortage of cargo handling equipment in yards and in foreign controlled ports;
- (vii) inadequate track and structures maintenance leading to numerous temporary restrictions attributable to poor track conditions and washouts;
- (viii) high overall ratio of employees per-ton-per-kilometer along with manpower shortages in certain departments;
- (ix) aging and underpowered locomotives and weak couplings that limit train lengths, notably on the high rolling grades (2 percent) between Jinja and Kampala; and
- (x) illegal encroachment within the URC's reserve that limit flexibility to expand operations or introduce new services.⁸

In 2006, Uganda Railways Corporation developed a strategy to lease off management of the railway lines to the Rift Valley Railways (RVR) for two decades in an effort to broaden and avail affordable transport, provide efficiency in road maintenance cost by introducing new axle load regulations, factoring in standards in railway safety and complying with environmental regulations. The takeover of the century-old line by RVR became necessary in order to restructure the Railways Corporation to enhance its capacity for revenue generation.⁹

The Rift Valley Railways consortium acquired a 25-year concession to operate both of the Uganda and Kenya Railways stretching from the Port of Mombasa to Kampala in Uganda and touching major economic towns within the region; the service provided by RVR was mainly cargo transportation.¹⁰ A total of 818,520 tonnes was hauled in 2015 compared to 682,800 tonnes in 2014 representing an increase of 19.9 percent and the relevance of the railway transport. The net tons by rail ferried through Port Bell decreased by 66 percent in 2015.¹¹

The railway transport system in Uganda also includes rail wagon ferry services on Lake Victoria connecting Port Bell and Jinja to rail networks in Tanzania at Mwanza and

6 Uganda Railway Corporation restructures service delivery, spurs economic development. *The New Vision*. 26th January 2016. pg. 100.

7 Centre for Performance Management and Evaluative Research. *National Railway Transport Policy*. Inception Report. pg. 5

8 Centre for Performance Management and Evaluative Research. *National Railway Transport Policy*. Inception Report. pg. 6.

9 <https://fortuneofafrica.com/ug/railway-transport>. Accessed on 21st June 2019.

10 <https://fortuneofafrica.com/ug/railway-transport>. Accessed on 21st June 2019.

11 Ibid

Kisumu in Kenya. The government of Uganda is at present in the process of constructing a Standard Gauge Railway (SGR) between Tororo –Pakwach and Kampala- Tororo and Malaba -Kampala.¹²

1.3. Statement of the problem

1.3.1 Management and regulatory gaps in the law

The URC Act did not foresee inclusion of other players in the railway transport management and regulatory policy. The Act is silent on the mandate, function and management of new actors in the railway business. At present, there exist new stakeholders within the railway transport sector like the Standard Gauge Rail Company, Kenya, South Sudan, DRC and Tanzania Railway Corporations framework under the Northern Economic Corridor which was not envisaged at the time the Act was enacted in 1992. This has resulted in overlapping mandates, functions and gaps in management and in turn has led to inefficiency in service delivery. This study sought to streamline mandates and functions of stakeholders within the railway transport sector.

Secondly, in an effort to mainstream management and institutional mandates of various government bodies, a Cabinet Directive on merging of particular institutions has affected the transport sector. This merger has left a lacuna in the administration, management, mandate, operations and policy affecting rail transport. This study sought to address the matter of inclusion of other players in the management and implementation of rail transport in Uganda.

1.3.2 Outdated regulatory framework

There have been no amendments to the URC Act since its enactment 27 years ago and this has rendered the penalty provisions under the URC Act inadequate or obsolete. The fines in the URC Act are of no consequence because of their weak punitive effect and as such are not deterrent anymore. The URC Act establishes the URC to be the manager and operator in the railway industry. There is now increased support to have more private sector involvement in railway industry.

1.3.3 Lack of a railway accident and incident investigation body

There is no independent accident and incident investigatory body to investigate railway accidents and serious incidents. Such a body would be in charge of rail safety policy, governance and internal control arrangement and provide for corrective action.

1.3.4 Setting standards

The Uganda railway network was initially built with the sole purpose of ferrying Uganda's raw materials to markets and manufactured goods into Uganda in the 1920s. The network does not meet the current competitive railway passenger and cargo standards. The Uganda railway network was constructed following the railway safety principles and guidance under the British Health & Safety Executive HM Railway Inspectorate formed in 1840. The last full review and update of the network took place in 1950 after construction of the last rail line under the Colonial government. To meet the changing demands of Uganda's societal

¹² Ibid

expectations, this reform sought to make proposals for amendment of the URC Act to meet the safety standards of construction which are important for safety of the railways. This is also in response to the EAC Northern Corridor Transport Agreement which requires standards to be put in place for harmonization of the railway network system across all the countries' boundaries for uniformity of services.

1.3.5 Emerging Issues

Perhaps the single biggest development in regulatory policy in the last twenty years has been the realization that government objectives for the traditional public utility industries can be better achieved by facilitating competition in the parts of those industries which can sustain competition. Such competition usually requires action by the regulator to ensure that entrants have non-discriminatory access to essential inputs. The application of this principle has revolutionized traditional approaches to regulation of public utilities. The rail sector has not been immune to this trend. There is now greater promotion of market focus and commercial orientation in the railway sector.

Railways in East African are also being developed as cross border, regional networks and there is a need to ensure safety, access, affordability and interoperability across such networks.

1.4. Objectives of the study

The overall objective of the review was to make proposals to modernise, harmonise, and improve the railway industry. Specifically, this review:—

- (i) examined the legislation and regulatory framework governing railways to identify any gaps therein;
- (ii) explored structural reform strategies for improvement of the performance and management of the railway sector;
- (iii) explored approaches that facilitate the development of regional, cross border rail services;
- (iv) established a dispute resolution mechanism for railway related matters; and
- (v) established avenues for enhancing private sector participation in the railway sector.

1.5. Justification for the study

Transport facilities are generally considered to be one of the most important factors influencing the pattern of economic activities in any geographical area and improvements in this field are often recommended as one way of tackling the problems of the underdeveloped countries of the world.¹³

The Uganda Vision 2040 highlights the potential of a transformed Uganda as a competitive middle-income status country with a per capita income of USD 9,500.¹⁴ To achieve this, Uganda needs to take deliberate and bold decisions to fast-track pro-development actions that can propel Uganda into this visualised transformation. The National Development Plans I and II emphasised the adoption of a multi-discipline approach that fosters efficiency

¹³ A. M. O'connor, *Railways and Development in Uganda*. 1965. pg. 1.

¹⁴ *Uganda Vision 2040*. 2013. para 56. pg 27.

and effectiveness in application of factors of production to enhance competitiveness of Uganda by reducing the cost of doing business for robust socio-economic transformation. In light of this, investing in a well-functioning rail transport system which is affordable and reliable should be a starting point for Uganda's transformation agenda.

The Global Competitiveness Report (2012-2013)¹⁵ indicated that limited and non-functional infrastructure is one of the biggest challenges to the development of Uganda.¹⁶ The report noted that for factor-driven economies (GDP per capita less than USD 2,000) infrastructure is a critical pillar for competitiveness.¹⁷ In Uganda's case, infrastructure development is the most limiting factor for productivity and competitiveness among the four basic requirements of competitiveness that ought to contribute over 60% of the total competitiveness factors.¹⁸ Streamlining the railway sector could go a long way in addressing this challenge.

The transport sector, especially the railway sub-sector faces challenges of weak legal, policy and institutional frameworks.¹⁹ A well thought-out legal framework that harmonises and addresses the management, administration, mandate and policies governing the various actors in the rail transport is crucial.

Between 1986 and 2015, the economy grew at an annual average rate of 6.92% while per capita income grew at an annual average rate of 3.6% over the same period. In a global context, between 1986 and 2015, Uganda was the 17th fastest growing economy in the world, the 4th in Africa. If the mineral-rich countries are removed from the sample, Uganda was 11th in the world, 1st in Africa.²⁰ Uganda's economy continues to expand and grow and critical infrastructure gaps are being closed and human development outcomes are improving.²¹

Growth leads to increased demand on the transport sector as a crosscutting sector which impacts on development generally. The shift in the needs of society for an affordable transportation mode merits attention. A report by a Standing Committee of Parliament²² observed that the government must revisit its policies on the Uganda Railways Corporation (URC). The Committee recommended that the URC Act should be revisited to terminate the myth that the URC can at all times operate commercially for a profit; that the URC should continue as a social utility institution as it renders broader strategic objectives for the government and people of Uganda.²³

By updating the legal framework for the railway sector, the Commission envisages a better regulated and managed railway subsector that can play a significant role in enabling Uganda achieve her development goals as spelt out in Uganda's Vision 2040 and the Second National Development Plan (NDP II).

15 The Global Competitiveness Report 2012-2013. World Economic Forum. Geneva Switzerland 2012. Klaus Schwab Economic Forum.

16 <https://sgr.go.ug/project-justification>. Accessed 24th June 2019.

17 The Global Competitiveness Report 2012-2013. World Economic Forum. Geneva Switzerland 2012.

18 <https://sgr.go.ug/project-justification>. Accessed 24th June 2019.

19 Republic of Uganda. National Development Plan II 2015/16 – 2019/20. 2015. pg. 26.

20 H.E. Yoweri Kaguta Museveni. State of the Nation Address, 2019. 6th June 2019.

21 Hon. Gabriel Arindru Ajedra. Minister of State for Finance, Planning and Economic Development. Opening remarks at the 10th national competitiveness forum, 7th November 2019. Kampala.

22 Parliament of Uganda. Report of the Standing Committee on Commissions, Statutory Authorities and State Enterprises into affairs and operations of the Uganda Railway Corporation. 1997.

23 Ibid page 133.

1.6. Scope of the study

The study focused on the following issues:

- (i) outdated institutional, legal and regulatory framework;
- (ii) enhancing private sector participation and competition;
- (iii) facilitating cross border railway services;
- (iv) investigation of railway accidents and serious incidents; and
- (v) dispute resolution mechanisms for railway disputes.

CHAPTER TWO LITERATURE REVIEW

2.0 Introduction

The management and regulation of the railway subsector in Uganda is guided by the Uganda Railways Act, Cap. 331. The Act provides the objects and functions of the Corporation, the operations, policy and management structures, the finances and its legal rights and obligations in relation to other persons.

At the time of its enactment, the law regulating railways was appropriate in relation to the railway business, management and administration requirements. Today however, the Act is flawed by:

- (i) outdated regulatory framework;
- (ii) management and regulatory gaps;
- (iii) limited private sector participation and competition;
- (iv) absence of an accident and incident investigation body; and
- (v) absence of dispute resolution mechanisms railway industry related matters.

2.1. The outdated regulatory framework

2.1.2. Conflicting and duplication of roles

The Act does not provide clear distinction as to roles of different players in the railway transport sector. The main sector players include Uganda Railway Corporation, Uganda National Roads Authority (UNRA) and local governments.

Road works in Uganda are the responsibility of UNRA and the Ministry of Works and Transport or district, urban or local authorities under the Ministry of Local Government for purposes of construction, operation and maintenance. Section 3 (a) of the Act which provides the objects of the Act. The objects of the URC are to enable the construction, operation and maintenance of railway, marine and road services both in and outside Uganda for the carriage of passengers and goods. This can easily lead to duplication and conflict. It is therefore important that the Act is amended to avoid ambiguities and create clarity for effective administration and management of railway transport in Uganda.

2.1.3. Composition of the governing body

The Act provides for composition of the governing body in section 8 (1). The governing body in accordance with this section consists of a board of directors comprising of the chairperson, managing director and seven other directors. There is no representation from the line ministry. It is important that the board has representation from the Ministry of Works and Transport as it is the line ministry, responsible for rail transport. This will facilitate effective administration and management of the railway transport subsector.

2.1.4. Frequency of meetings of the URC board

Section 11 provides that the board of directors shall have meetings once every month. During preliminary consultations conducted by the Commission, concerns were raised

about the practicality of this provision. It was observed that it is not practical for a board to have meaningful meetings every month; that the provision is not realistic as it does not give the URC management time to implement previous decisions of the board.

2.1.5. Constitutionality of certain provisions of the URC Act

Section 52 (a) of the Act provides that no proceedings shall commence against the Corporation except where the particulars containing the claims have been served upon the managing director of the Corporation.

Article 250 (2) of the Constitution provides that civil proceedings by or against the government shall be instituted by or against the Attorney General; and all documents required to be served on the government for the purpose of or in connection with those proceedings shall be served on the Attorney General.

Section 53 of the Act provides that no execution against the property of the Corporation shall be made. This section is unconstitutional as well. Article 250 (1) of the Constitution of the Republic of Uganda provides that 'where a person has a claim against the government, that claim may be enforced as a right by proceedings taken against the government for that purpose.

In the cases of *Attorney General v. Osotraco Ltd*²⁴ and *Kenya Bus Service Ltd & another v. Minister for Transport & 2 others*²⁵ the courts held that provisions that create limitations to proceedings against government are discriminatory and unconstitutional and contrary to Article 48 of the Constitution of Kenya.²⁶

This study sought to determine if there was need to amend sections 52 and 53 of the URC Act to bring them into conformity with Article 250 of the Constitution.

2.1.6. Offences and penalties

Part XIII of the Act provides for offences and penalties. An examination of this part of the Act indicates that the offences and penalties therein are outdated and are therefore no longer deterrent enough. For example, section 80 of the Act provides that any person whose acts obstructs, damages or in any way interferes with any train, vessel or vehicle, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

Section 81 of the Act provides that any person who behaves in a violent or offensive manner, discharges any firearm or does anything which may cause injury to any person on those premises, damages or, without lawful excuse, interferes with any property of the corporation, permits or allows any animal to stray on any premises occupied by the corporation and properly fenced, commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings.

Sections 82, 83, 84, 85, 86, 87 of the Act provide for among other things, offences relating to interference with equipment on a train, not being an authorised employee or agent of the corporation, sells or parts with any ticket or free pass for any other person to travel

24 ((Civil Appeal No 32 of 2002)) [2005] UGCA 1 (30 June 2005).

25 Kenya Bus Service Ltd & another v Minister for Transport & 2 others [2012] eKLR.

26 Kenya Bus Service Ltd & another v Minister for Transport & 2 others [2012] eKLR. at page 16.

on a train, tendering false receipt, unlawfully transporting dangerous goods, endangering safety operations, demanding improper amounts respectively commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment not exceeding twelve months or to both.

Except for one or two sections that provide for a fine not exceeding one hundred thousand shillings, all the rest of the sections provide for fines not exceeding fifty thousand shillings.

The penalties above are not only outdated, they are also not deterrent. A good law must have penalties that deter the prohibited acts or omissions. The penalties under part XIII of URC Act do not take into consideration inflation over the years. Today, penalties are provided in currency points. Currency points take into consideration inflation.

Specific attention must be paid to offences such as railway trespass, fare evasion (for instance attempting to travel on a railway without having previously paid the fare with intent to avoid payment thereof); assault of staff; criminal conduct on board (for instance unruly, drunken or violent behaviour on board); damaging trains and endangering safety of rail users and drunkenness of passengers and employees.

Fines and penalties should be aligned with prevailing socio-economic circumstances.

2.2 Management and regulatory gaps

The need for better managed and well regulated railway transport is widely recognised. Many countries have introduced reforms designed to improve the managerial and regulatory framework of national railways. Such reforms, often described as ‘railway restructuring’, have involved the creation of new organisations; revised accounting methods; liberalisation through the introduction of competition; privatisation, de-monopolisation and regulatory reform.²⁷

The railways subsector in many countries (including Uganda) has faced a range of interrelated problems, which typically have comprised of; chronic financial deficits, growing operating subsidies, archaic pricing systems where charges are not related to cost; excessively high costs, low operating efficiency, poor management and technical efficiency, severely congested services; low service quality, deficiencies in the physical infrastructure and low private sector participation in the transport sector.²⁸ This could be attributable to the integrated management structure implemented in most countries.

For governments, the overall bill to be paid each year for operating railways and the financial demands arising from other requirements essential to the proper functioning of society has become too high.²⁹ This financial burden when combined with a growing dissatisfaction with the quality of railway services by customers with a wider range of transport options, has led governments to withdraw financial support for their railways. This in turn has led to deterioration in the condition of tracks, bridges, signaling systems, locomotive and rolling-stock fleet, resulting in high rates of equipment failure and the

27 Economic and Social Commission for Asia and the Pacific. Restructuring of Railways. 2003. pg 1.

28 Economic and Social Commission for Asia and the Pacific. Restructuring of Railways. 2003. pg 3.

29 Economic and Social Commission for Asia and the Pacific. Restructuring of Railways. 2003. pg 5

imposition of increasingly stringent speed restrictions on tracks and bridges, in order to arrest the decline in physical standards.³⁰

The market response to falling standards of service is a withdrawal of business and reduced traffic volumes, leading successively to: declining revenue; further widening of the financial deficit; and reductions in railway budgets.

2.2.1 The Problems arising from state management of railways

State enterprises are not necessarily technically inefficient. For example, in many ways the performance of Chinese Railways matches the best in the world.³¹ However, the problem is as long as they have recourse to deficit financing to maintain supply, railways have little incentive to be cost-effective or to respond flexibly to changes in user demand.

Even regulated private enterprises suffer from Interference from the government on matters relating to railway day-to-day operations, which leads to the enterprise having poorly defined goals and relatively passive management that may be unresponsive to changing market conditions.³² This has had three important consequences:

- (i) assets have not been adequately maintained; attempts to offer mobility to low-income segments of society by keeping rail fares at uneconomically low levels have often led to the physical deterioration of the rolling stock due to a lack of funds for new investment;
- (ii) service has failed to respond to need, protected monopolies usually fail to respond to new demands for expanded services or improved quality; and
- (iii) transport costs have been too high; in Argentina for instance, the privatisation of the railways demonstrated that labour costs were more than double those necessary for the maintenance of a financially viable system.³³ In the United Kingdom, average operating costs per vehicle kilometer in the bus industry were reduced by 30 to 40 percent following deregulation and privatisation.³⁴

It can be argued that the best way to align consumer needs and demand with provision of railway services, in a manner which promotes economic and financial sustainability is through competition.³⁵ Policy makers in many countries have concluded therefore, that the solution to this problem is likely to be found in creating a competitive 'market based' railway industry.³⁶

The URC Act establishes the Uganda Railway Corporation as a corporation that owns railway assets, operates the railway and is a regulator.³⁷ The main object of the URC is to construct, operate and maintain the railway marine and road service.³⁸ Some of the functions of the URC include: to carrying passengers and goods, operate trains

30 Economic and Social Commission for Asia and the Pacific. Restructuring of Railways. 2003. pg 5

31 United Nations Economic and Social Commission for Asia and the Pacific. The Economic Regulation of Transport Infrastructure Facilities and Services -- Principles and Issues. 2001. pg 85.

32 Ibid

33 Estache, A., Carbajo, J.C., Rus. Argentina's transport privatisation and regulation. 1999. World Bank Policy Research Working Paper 2249.

34 Heseltine, P.M. and Silcock, D.T., The effects of deregulation on costs, Journal of Transport Economics and Policy. 1990. 24(3). 239-254

35 Economic and Social Commission for Asia and the Pacific. Restructuring of Railways. 2003. pg 8.

36 Kopicki, R. and Thompson, L.S. Best methods of railway restructuring and privatisation. 1995. World Bank CFS Discussion Paper Series no. 111.

37 Ministry of Works and Transport. Legal, Regulatory and Institutional Report, 2014. Vol. G. pg. 37.

38 Section 3 URC Act, Cap 331.

and to acquire, construct and manufacture trains, operate and maintain signaling and telecommunication equipment for the proper discharge of its functions, and impose levies, rates, fares and charges, dues or fees for any service performed by the corporation.³⁹

This existing structure makes the URC the infrastructure manager as well as a player in commercial railway operations. Analysts have come to believe that the state is poor at doing business.⁴⁰ This study sought to make proposals regarding the governance and management structure of the railway sector to improve its efficiency and performance.

2.3 The Ugandan railway industry structure

Uganda's legal and regulatory framework for the rail subsector reflects the vertically integrated structure of the industry. The Ugandan government has legal responsibility for all aspects of the rail sector: rail policy, development of railway lines, ownership of rail infrastructure, maintenance of rail infrastructure and train operations. The Ministry of Works and Transport formulates policies, plans, sets standards, builds capacity, carries out advocacy, regulates, monitors and evaluates the works and transport sector.⁴¹ Through URC, the government is responsible for both infrastructure and rail services.

There have been previous efforts to reform the railway transport subsector to ensure that the railway subsector involves private participation, that the law establishes an independent regulator to deal with both safety, environmental and economic regulations in railway management. These efforts are manifest in the legal and policy initiatives listed hereunder.

(a) The Uganda Railways bill, 2007

This Bill was drafted following the diversification of the URC operations to Rift Valley Railways on a 25-year concession in 2006. The Bill spelt out the responsibilities of asset ownership, operations and maintenance, concession management and regulation. The Bill also provided for the creation of a successor company to the Uganda Railways Corporation,⁴² the creation of an office of rail regulation,⁴³ investigation of accident and incident investigations,⁴⁴ and provisions on commercial rail operations.⁴⁵

(b) The Uganda Railways bill, 2012

The objectives of the bill are to:

- (i) create and promote an enabling environment for the private sector;
- (ii) ensure that government retains ownership of all land comprising railway infrastructure;
- (iii) promote provision of efficient and cost-effective services by operators;
- (iv) protect the rights of railway operators, shippers and users;

39 Section 4 URC Act, Cap 331.

40 Ministry of Works and Transport. Legal, Regulatory and Institutional Report, 2014. pg. 20.

41 <http://www.works.go.ug>. Accessed 8th August 2019.

42 Part II. Uganda Railways Bill, 2007.

43 The Bill provided for the creation of an independent Chief Regulatory Officer to, among other functions, regulate rail safety and environmental compliance, regulate discriminatory practices and abuse of monopoly power and monitor and ensure compliance with the provisions of the Bill.

44 Part VI

45 Part VII. Access to rail services, rates and fares, access to infrastructure and complaints and hearings.

- (v) protect public interest by strengthening the capacity to regulate railway operations in reference to: safety and environmental standards; and arbitrary discriminatory practices and anti-competitive behavior and abuse of monopoly power;
- (vi) promote cooperative governance between regulators;
- (vii) encourage the development of the railway network through procurement of private investment in a manner that is transparent, prompt and participatory;
- (viii) promote harmonization of regulatory standards, practices and procedures and cooperation between railway operators in the East African region; and
- (ix) encourage seamless operation of transport services in support of multi-modal integration and national growth.⁴⁶

The bill provided for incorporation of the Uganda Railway Company Limited to replace the URC after restructuring of the railway subsector in Uganda.⁴⁷ The bill also contains proposals for establishment of a railway regulator,⁴⁸ safety and environmental rules and practices,⁴⁹ investigation of accidents⁵⁰ and commercial rail operations.

(c) The draft National Railway Policy, 2018

In order to foster faster socio-economic transformation within the ever globalised world, the Government has undertaken strategic actions aimed at revitalizing the railway industry in Uganda through implementation of strategic investment led policy interventions. To this end, a national railway policy has been formulated by the government to implement this strategic intent. The strategic interventions will aim at establishing and repositioning both passenger and freight rail for inherent competitiveness, by exploiting rail's generic and latest technologies to increase axle load, speed and train length.⁵¹ The strategic objectives of the Policy are to: ensure railway transport services are globally competitive; establish a well thought through governance, institutional and regulatory framework for managing, operating and maintaining railways; and encourage, introduce and regulate private sector participation in the rail sector.⁵²

In the draft Policy, there are four main areas for consideration in management of railway systems. which are: infrastructure management, regulations, passenger operations, and freight operations. Rail regulation is the most critical in all the above because it significantly affects freight, passenger operation and infrastructure management. In many countries, in order to improve on performance and to ensure delivery of specific transport services, access, capacity and prices also need to be regulated: this is known as economic regulation.⁵³

The draft Policy states that given the Northern Corridor Integration Projects (NCIP), arrangement of seamless connectivity, initial limited traffic of both cargo and passengers and its geographical positioning connecting various countries, there is need to institute an option which can easily be upgraded in future as operations intensify.⁵⁴

46 Clause 5. The Uganda Railways Bill, 2012.

47 The Uganda Railways Bill, 2012. pg. 4.

48 Part III. The Uganda Railways Bill, 2012.

49 Clauses 25-28. The Uganda Railways Bill, 2012.

50 Part VI. The Uganda Railways Bill, 2012.

51 Draft National Railway Policy, 2018. pg. xii. (unpublished).

52 Draft National Railway Policy, 2018. pg 25. Unpublished

53 Draft National Railway Policy, 2018. pg 35. Unpublished

54 Draft National Railway Policy, 2018. pg 35. Unpublished

The draft Policy presents three options: Option A: Integrated Concessionaire Financing the Maintenance of the Infrastructure; option B: which is vertical separation between infrastructure management and train operations; and finally, option C: which is the vertical separation and horizontal separation.⁵⁵

The recommendation in the draft Policy is for Uganda to adopt option C in a phased manner until the traffic intensity allows for competition.⁵⁶ According to the draft policy, option C provides probably the best regulatory framework to implement a fully competitive rail system. Setting up a formal legal and regulatory framework that would permit open access would send a message to the market that the sector is now competitive, as it will provide the possibility of multiple operators and then let the market decide whether/when this occurs.⁵⁷

2.4 Reforming the railway industry structure

During the second half of the twentieth century, the most common structure for national rail delivery was a single, publicly-owned firm entrusted with the unified management of both infrastructure and operations.⁵⁸ The freedom to compete in supplying rail services was weak or absent from national rail industry structures in most countries. Under this protective environment, during the 1970s and 1980s, many national rail companies incurred growing financial deficits. Cantos explained that:

The main problems associated with the traditional policies for railways were increasing losses, which were usually financed by public subsidies, a high degree of managerial inefficiency and business activities oriented exclusively toward production targets rather than commercial and market targets.⁵⁹

The sector's decline sparked a restructuring movement around the world, with the core objectives of improving service quality and cost reduction at the heart of these reforms.⁶⁰ Reforms were in some cases, such as in Japan and Sweden, implemented over many years; while others occurred in only a few years, as in Britain.

Experience shows that alternatives to the archetypal railway can be formed from three main policy building blocks:

- (i) *Business organization* - the degree to which its delivery institutions are to be structured in a business-like or commercial manner including the option of private sector ownership or operation of core railway functions;
- (ii) *Market competition* - the degree to which the railway transport services it produces are to be competitive, as between different rail service providers;
- (iii) *Separability* - the degree to which its monolithic nature should be broken down and some of its sub-businesses be separated and decentralised.⁶¹

55 Draft National Railway Policy, 2018. pg 39. Unpublished

56 Draft National Railway Policy, 2018. pg 39. Unpublished

57 Draft national Railway Policy, 2018. pg 39. Unpublished.

58 It would typically operate as a department of a ministry, or a public entity with an administrative reporting relationship to that ministry.

59 Cantos, P., Pastor J and Serrano, L. Quantifying the benefits from structural reforms in railway transport markets in APEC economies. 2011, pg. 103.

60 Nash, C., "Passenger railway reform in the last 20 years – European experience reconsidered", Research in Transportation Economics 22, Vol. 22, Issue 1, 2008, pg. 67.

61 World Bank. Railway Reform Toolkit for improving Rail Sector Performance, 2011. pg 66.

There are three main corporate forms that can help improve the performance of the archetypal railway organization by reducing bureaucratic demands and political pressures: a state-owned enterprise operating under a specific railways law or state-owned enterprise law; a state-owned company under companies' law; or a privately-owned company under companies law.⁶²

How the railway industry structure is divided, referred to as 'separability', comprises two primary dimensions, horizontal and vertical. Horizontal separations are sometimes justified by creating better-managed, decentralized, and market-focused units from a monolithic national company. Vertical separation into companies for operations and for infrastructure can help expand private sector participation and competition in train services.⁶³

Horizontal separation works best when there are clearly separable business units with discrete geographic focus. For example, larger countries have multiple railway markets— heavy-haul freight in a mining region, major urban centers, and regional networks— each can be owned, managed and financed separately, compete over different routes, perhaps with access to tracks in other regions. Specialist businesses, such as a container rail company, may need to be vertically separated from infrastructure in order to be independently constituted.⁶⁴

A railway can also be divided into one or more entities that own and manage railway infrastructure and one or more entities that operate train operating companies offering transport services, or it can choose to allow vertically separated 'tenant' train operating companies to use the infrastructure of a vertically integrated dominant or host railway.⁶⁵

Because of these changes railways now come in all shapes and sizes: vertically integrated, vertically separated, with or without competition, public and private, passenger or freight dominated or mixed, supported by subsidies or fully self-reliant.

Vertically integrated Railway System

For a rail service and infrastructure, the term "vertically integrated" is used to refer to the situation in which the owner of the track infrastructure is allowed to provide the given rail service over that infrastructure.⁶⁶

Fully Integrated, publicly owned monopoly

Many of the archetypal railways prior to the reforms of the late 1980s and early 1990s, were run as and by public departments and authorities which, according to the World Bank, were "ill-equipped to compete in a tough external business environment."⁶⁷ This is because they were often captive to 'bureaucratic pressures' rather than commercial incentives, described by the World Bank as: accountability measured-by-process ('box-ticking') rather than results; vulnerability to short-term national budgeting processes that destabilise longer-term business and investment planning; public service employment

62 World Bank. Railway Reform Toolkit for improving Rail Sector Performance, 2011. pg 68.

63 World Bank. Railway Reform Toolkit for improving Rail Sector Performance, 2011. pg 76.

64 World Bank. Railway Reform Toolkit for improving Rail Sector Performance, 2011. pg 76

65 World Bank. Railway Reform Toolkit for improving Rail Sector Performance, 2011. pg 77.

66 Structural reform in the rail industry, OECD Journal: Competition Law and Policy, No. 3, Volume 8, issue 2, 2006, pg 86.

67 World Bank, Railway Reform: Toolkit for Improving Rail Sector Performance, pp. 67.

norms and procedures that impede commercial operations; and political patronage or seniority as a basis for selecting board and senior management, rather than merit; and other constraints.⁶⁸

These railways can also be bound by political pressures that lead to what might be considered perverse commercial outcomes (whatever other rationale there might be), such as maintaining artificially cheap fares for passengers, running trains where passenger demand is very low, or reallocating investment to areas of greatest political visibility. This led Russell Pittman to conclude that a broad consensus had emerged that the traditional arrangement of a state-owned monopoly railway was “inefficient and unworkable.”⁶⁹

To overcome this, other models of business organisation have been developed. For example, state owned enterprise,⁷⁰ state owned company⁷¹ and privately owned company.⁷²

The principle argument in favour of having a fully integrated, publicly- owned monopoly, and which can be applied more widely to other integrated structures, is that the relationship between the services and rolling stock, as well as the quality, quantity and technical characteristics of the infrastructure, is so close that both aspects need to be planned together. Instead of planning, operation and investment decisions being split among multiple organisations, under a single, vertically integrated system, “all decisions can be taken within one company by one line of command.”⁷³ It is thus argued that vertical integration enables optimisation for the system as a whole which “is difficult to achieve in a vertically separated railway.”⁷⁴

It is also sometimes argued that having a single operator creates economies of scale in operations.⁷⁵ However, there is good evidence that rail systems are not subject to major economies of scale (i.e. whether track traffic volume is carried by a single operator or several) because of greater management complexity and loss of corporate agility as the scale increases.⁷⁶ They do experience economies of density, arising from declining average unit costs of additional traffic over a fixed railway infrastructure until capacity is reached.⁷⁷

However, with a single, integrated and government-owned operator there is often a lack of clear commercial focus and lack of incentives to improve the quality of services. Independent regulation, in terms of setting performance and commercial objectives, is often proposed as a way of overcoming this lack of incentives. Yet, in the absence of

68 World Bank, *Railway Reform: Toolkit for Improving Rail Sector Performance*, 2011, pp. 67-68.

69 Pittman, R. Options for restructuring the state-owned monopoly railway. *Research in Transportation Economics*, Vol 20, Issue 1 2007 pp179-198

70 Constituted under structures established by a specific railway law or a general state enterprise law designed to accommodate a range of government businesses.

71 a state-owned company may be set up if government wants an arm’s length relationship, similar to but more rigorous than a state-owned enterprise.

72 World Bank, *Railway Reform: Toolkit for Improving Rail Sector Performance*, 2011. pp. 68-70. A joint stock company owned by private shareholders is the most commercial structure for delivery of rail transport services in competitive markets.

73 van de Velde, D., C. Nash, A. Smith, F. Mizutani, S. Uranishi, M. Lijesen and F. Zschoche for CER, *EVES-Rail - Economic effects of Vertical Separation in the Railway Sector*, 2012, pg. 26

74 Pittman, R. Options for restructuring the state-owned monopoly railway. *Research in Transportation Economics*, Vol 20, Issue 1 2007 pp 179-198.

75 The average costs decrease as the size of the company increases.

76 World Bank. *Railway Reform Toolkit for improving Rail Sector Performance*, 2011. pg. 73.

77 Nash et.al, “Comparing three models for introduction of competition into railways, *Journal of Transport Economics and Policy*”, *Journal of Transport Economics and Policy* Vol. 47, No. 2, May 2013, pp 191-206.

clear commercial incentives, the use of financial rewards and penalties to incentivise good performance is, “difficult, if not impossible.”⁷⁸

Multiple, vertically integrated operators

It is sometimes possible to retain vertical integration and to have it horizontally separated across regional administrative units of the national railway. Horizontal separation works best when there are clearly separable business units with discrete geographic focus. For example, larger countries have multiple railway markets (e.g. heavy-haul freight in a mining region, major urban centres, and regional networks), with each owned, managed and financed separately, completely over different routes, perhaps with access to tracks in other regions.⁷⁹ This, according to the World Bank, can “sharpen market focus and management accountability, and allow for specialised operations to be devolved, divested, or compete with one another.”⁸⁰

Japan is the most notable example of a vertically integrated model. Its previously singular structure was split into six separate business units following reforms initiated in 1987. It does, however, have a mixed ownership structure with the three largest rail businesses having been progressively privatised during the 1990s and 2000s and in 2016.⁸¹

According to the World Bank, almost all private operation of previously state-owned railway services has improved market and commercial performance.⁸² Despite this, railway network privatisation or concessions have proven more daunting and less attractive as a public policy choice in countries where national railways have a strong passenger base. In Canada, Great Britain, New Zealand, and parts of Australia, some or all main-line railway infrastructure was transferred to full private ownership.⁸³

In Canada, Great Britain, New Zealand, and parts of Australia, some or all mainline railway infrastructure was transferred to full private ownership. Great Britain and New Zealand have essentially brought railway infrastructure back into public ownership, although train operations are still in the hands of private companies.⁸⁴

Vertically integrated concessions

For a railway that is mostly or solely a passenger operation, the choice for creating competition and enabling private sector participation in restructuring would be between auctioning a concession for the integrated railway and auctioning a concession for train operations while making other arrangements for the infrastructure.⁸⁵

In a typical concession contract, the state maintains ownership of the land under the railway while transferring most other infrastructure and rolling stock assets and the right

78 Structural reform in the rail industry, OECD Journal: Competition Law and Policy, No. 3, Volume 8, issue 2, 2006, pg 96.

79 World Bank. Railway Reform Toolkit for improving Rail Sector Performance, 2011. pg 76.

80 World Bank. Railway Reform Toolkit for improving Rail Sector Performance, 2011. pg 76.

81 Fumio Kurosaki. Reform of the Japanese National Railways. Network Industries Quarterly. Vol. 18. No. 4. 2016. pg 10.

82 World Bank. Railway Reform Toolkit for improving Rail Sector Performance, 2011. pg 71.

83 World Bank. Railway Reform Toolkit for improving Rail Sector Performance, 2011. pg 71.

84 World Bank. Railway Reform Toolkit for improving Rail Sector Performance, 2011. pg 71.

85 Pittman, R. Options for restructuring the state-owned monopoly railway. Research in Transportation Economics, Vol 20, Issue 1 2007 pp 179-198.

to operate rail services to a private company during the contract period. Concessions are usually longer-term arrangements which, according to the World Bank, “can take advantage of private sector investment and commercial management practices.”⁸⁶ Railway concessions can encompass the whole enterprise or specific enterprise components – freight operations, commuter services, or long-distance passenger services.⁸⁷

Fully integrated concession arrangements, particularly for passenger rail services, have not been widespread internationally,⁸⁸ particularly in Europe where current regulations require accounting separation between the infrastructure manager on the one hand and between freight and passenger services on the other.

Where it has been done, it has seen “generally positive results.”⁸⁹ Latin America and Africa have led the way in railway privatisation through concessions. Eight Latin American countries – Argentina, Bolivia, Brazil, Chile, Costa Rica, Guatemala, Mexico and Peru – developed private rail concessions to one extent or another in the 1990s.⁹⁰ In assessing the effects of concession arrangements in Latin America, the World Bank noted as follows:

Now over a decade since rail concessioning in Latin America began, the overall assessment of its results is positive, particularly for freight railways. Railway traffic volumes have climbed, with some improvements in surface transport market share. Although numerous data problems exist, measures of productive efficiency almost uniformly show post-concession improvements in cargo transport. Effects on rail rates and service levels have generally received positive reviews. Evidence is less extensive for passenger services, mostly because concessioning was largely limited to commuter services in Argentina and Brazil and because such concessions must be evaluated in terms of complex subsidy and regulated pricing regimes, rather than as market-based private enterprises. Railway concessions have not revived uneconomic intercity passenger services, nor has there been much effort to do so.⁹¹

Vertical separation

Competition to operate rail services is seen as an important way to improve services and lower fares, as outlined in the European Commission’s 2011 White Paper:

“End customers of rail transport – passengers, forwarders and contracting authorities – would benefit from increase in competition through lower prices, higher quality and greater customer orientation. This would increase the attractiveness and market share of rail, which is a declared goal of European and many national transport policies.”⁹²

However, there remains a danger of conflict of interest where the infrastructure manager is part of a vertically integrated structure, as they retain an incentive to restrict or deny access

86 World Bank. *Railway Reform Toolkit for improving Rail Sector Performance*, 2011. pg. 200

87 World Bank. *Railway Reform Toolkit for improving Rail Sector Performance*, 2011. pg. 201.

88 Gangwar, R. et. al. “Framework for structuring public private partnerships in railways”, *Case Studies on Transport Policy*, Volume 3, Issue 3, September 2015, pp 295-303.

89 World Bank. *Railway Reform Toolkit for improving Rail Sector Performance*, 2011. pg. 200.

90 Martin, B. *Railway privatisation through concessions – the origins and effects of the experience in Latin America*, 2002, pg.2.

91 World Bank, *Results of Railway Privatization in Latin America*, *Transport Papers*, TP-6, 2005, p.vii.

92 European Commission, *White Paper: Roadmap to a Single European Transport Area*, COM, 2011. pg 9.

to competitors.⁹³ The incentive to discriminate against new entrants may be eliminated by fully institutionally and organisationally separating the infrastructure manager and the service provider. Thus, the principle advantage of vertical separation is that, at face value, it ensures equal terms of competition between different operators when no operator has more control over the infrastructure than any other.

Even though complete separation is perceived to be more conducive to competition, Van de Velde et. al (2012) found that “no single structure seems more favourable than the other in terms of promoting market entry,”⁹⁴ Further that:

Complete vertical separation will not remove the incentive for the infrastructure manager to favour major customers over minor ones. It should be reiterated that we have found no systematic pattern whereby new entry, where permitted, is less likely with a holding company than complete separation, so it is not clear that further measures are needed.⁹⁵

The other notable advantage of having complete vertical separation is that it provides financial transparency and enables specialisation, particularly in terms of private companies providing public-facing commercial services and leaving government to maintain its role in the financing and investment aspects of the railway.⁹⁶ It has been argued that:

...transparency may in itself be a way of increasing competition, but it may also have other advantages in terms of helping regulators and state authorities to make efficient decisions, for instance regarding investment. In a franchising system, it may attract bids from more companies than those who would be willing to take responsibility for both the infrastructure and train operations in (regional) vertically integrated franchises.⁹⁷

From the point of view of technical efficiency,⁹⁸ vertical separation clearly generates a number of costs. Transaction costs, for example, in terms of negotiation and enforcement of contracts between the operators and the infrastructure manager, would be avoided by a vertically integrated railway.⁹⁹ While transaction costs are higher in separated systems, overall they are rather small, in the region of 2-3% of total railway costs.¹⁰⁰ It should be noted that cost increases depend on the circumstances of the country concerned and the way in which the system is managed.¹⁰¹

The challenge is to clarify allocations of responsibility and accountability between railway infrastructure managers and train service operators at the interfaces of railway technology,

93 *Structural reform in the rail industry*, OECD Journal: Competition Law and Policy, No. 3, Volume 8, issue 2, 2006, pg 129

94 van de Velde, D., C. Nash, A. Smith, F. Mizutani, S. Uranishi, M. Lijesen and F. Zschoche for CER, EVES-Rail - Economic effects of Vertical Separation in the Railway Sector, 2012, pg 32.

95 van de Velde, D., C. Nash, A. Smith, F. Mizutani, S. Uranishi, M. Lijesen and F. Zschoche for CER, EVES-Rail - *Economic effects of Vertical Separation in the Railway Sector*, 2012, pg 32.

96 Nash, C., “*Passenger railway reform in the last 20 years – European experience reconsidered*”, Research in Transportation Economics Volume 22, Issue 1, 2008, pg 63

97 van de Velde, D., C. Nash, A. Smith, F. Mizutani, S. Uranishi, M. Lijesen and F. Zschoche for CER, EVES-Rail - Economic effects of Vertical Separation in the Railway Sector, 2012, pg 32.

98 Technical efficiency is the effectiveness with which a given set of inputs is used to produce an output. A firm is said to be technically efficient if it is producing the maximum output from the minimum quantity of inputs, such as labour, capital and technology.

99 OECD, Recent developments in rail transportation services, 2013, pg 28

100 Merkert, R, A. Smith and C.A. Nash, “The measurement of transaction costs – Evidence from European Railways”, Journal of Transport Economics and Policy, Vol. 46, No. 3, September 2012, pp349-365

101 Nash, C, and Matthews, B. for TS and CER, European transport policy: progress and prospects, 2009.

operations, safety, and economic concerns. Amongst countries that have introduced it there have been positive and negative experiences (as is also the case with integrated railways). Some governments have considered separation but rejected it as too complex or as putting at risk some of the possible benefits of integration such as single point performance responsibility, keeping infrastructure managers 'closer' to final customers, co-ordination of interdependent infrastructure and rolling stock investment decisions; and a unitary command and control structure to meet emergency situations (such as severe winter conditions).¹⁰²

Governments will seek full vertical separation only if they want to introduce private sector participation and competition into train operations. Independent research has so far failed to find any benefits to separating railway infrastructure from operations without reforms in one or both.¹⁰³

2.5 Comparative study: International structural reforms United Kingdom

Until 1994, the rail industry in the United Kingdom was organized in the form of a single, publicly owned and vertically integrated company, British Rail (BR), which managed the infrastructure and provided passenger and freight services throughout the country. It also carried out almost all track and train maintenance itself. Under state control the railways were expected to run economically but also to cater for vaguely defined social needs.¹⁰⁴

During the 1980s British Rail was encouraged to develop greater commercial awareness. It did this by reorganising its business and objectives, privatizing its 'non-core' activities and encouraging private sector involvement.¹⁰⁵ The Government was determined to reduce the level of subsidy flowing to the public sector railway and effect substantial efficiency improvements in British Rail. Restructuring was motivated primarily by the desire to eliminate the subsidy, but also the objectives of using private borrowing to finance investment and of improving the efficiency of the industry.¹⁰⁶ The reorganisation showed that the system could be operated as a series of independent components, rather than a monolithic structure. The reorganisation also led to marked reduction in the public sector obligation payments paid direct to British Rail in support of loss making services.¹⁰⁷ However, British Rail finances collapsed in early 1990s largely because of increased expenditure on safety following the 1988 Clapham rail crash, the costs of improving lines to the Channel Tunnel and perhaps above all because of the recession, which saw usage fall by ten percent.¹⁰⁸

The Queen's Speech of 1992 promised Legislation that would enable the private sector to operate rail services. The Government's proposal was the greater involvement of the private sector in the running of the railways through the sale of some of BRs businesses and the progressive contracting out of the management of the passenger services.¹⁰⁹ The structural options considered for privatisation of British Rail were to:

1. privatise the railways as a single unit;

102 World Bank. Railway Reform Toolkit for improving Rail Sector Performance, 2011. pg 77.

103 Friebel, G, et al. Railway deregulation: a European efficiency comparison (University of Toulouse, 2003).

104 See section 3 of the Transport Act, 1962 and section 41 of the Transport Act of 1968.

105 British Rail. Rail Facts and Figures, March 1992

106 Torben Holvad. Publicly owned monopolies: railways in transition. pg. 10.

107 Transport Committee, Railway finances (fourth report of session 1994-95) HC 206, 5 1995, para 9

108 Transport Committee, Railway finances (fourth report of session 1994-95) HC 206, 5 1995, paras 16-20.

109 Dot. New opportunities for the railways: the privatisation of British Rail. Cm 1012. July 1992.

2. break the railways into separate companies based on regions;
3. break them into separate vertically integrated companies based on its existing market 'sector' businesses (e.g. intercity passenger);
4. separate infrastructure from the operation of train services
5. Some hybrid of the aforementioned.¹¹⁰

Option 3 was preferred by the passenger businesses of British Rail as they would generally control the infrastructure. The freight businesses were against this option for the same reason. In 1991 it was decided that a hybrid structure should be adopted: vertical separation throughout most of Britain and vertical integration in the London commuter area where congestion was considered to preclude much competition. The hybrid was later abandoned in favour of full vertical separation (Option 4) largely to provide for the possibility of competition.¹¹¹ The new structure of the railway is reflected in the 1993 Railways Act. BR was dissolved as a single entity¹¹² and infrastructure split infrastructure (tracks, bridges, tunnels, depots, and signaling systems) from fleet ownership and train service operations (running the trains, managing some stations and managing the customer interface). Duties were largely passed on to the private sector and BR's rail freight operations were sold.¹¹³

Sweden

The 1988 railway reform in Sweden was motivated by four concerns. First, railways were perceived as having environmental and safety advantages that are not appropriately accounted for in an unregulated market. Second, it was important to maintain a balanced regional economic growth. Third, the road sector was thought to have benefited from the State assuming full responsibility for its infrastructure. And fourth - the driving factor behind the reform – the Swedish State Railway (SJ's) finances continued to deteriorate.¹¹⁴

The Transport Policy Act of 1988 major feature was the vertical separation of infrastructure from operations. The state took full responsibility for railway infrastructure investments and maintenance by means of a new authority (Banverket), while SJ would transform into a train operating company paying track access charges to run on the network. The Act was to turn the railway into a transport system where efficiency, customer orientation and profitability were the key issues.¹¹⁵ In 2001, horizontal separation was introduced by splitting SJ into a passenger and freight companies.¹¹⁶ At the same time, Jernhusen, was created as the company responsible for the railway stations. In 2010, Banverket and the National Road Administration were merged into a new Swedish transport administration, Trafikverket, responsible for managing both road and rail networks, while responsibility for rail infrastructure construction and maintenance was given to the newly established state owned agency, Infranord.¹¹⁷ About 80% of the total railway network is operated by the

110 Jeremy Drew. Rail freight: the benefits and costs of vertical separation and open access. pg. 8.

111 Jeremy Drew, The Benefits for Rail Freight Customers of Vertical Separation and Open Access, *Transport Reviews*, (2009) 29:2, 223-237.

112 Williams Rail Review, Current Railway Models: Great Britain and Overseas, Evidence Paper, March 2019 5 Crown copyright 2019

113 Williams Rail Review: Evidence Paper. Structure of the rail sector in Great Britain. 2019. pg. 5

114 Kopicki, R and Thompson, L. Best methods of railway restructuring and privatization. CFS Discussion paper series No. 111 pg. 183

115 Fumio Kurosaki, Gunnar Alexandersson, Managing unprofitable passenger rail operations in Japan - Lessons from the experience in Sweden, *Research in Transportation Economics*, Volume 69, 2018, 460-469, accessed on <https://www.sciencedirect.com/science/article/pii/S0739885917302524>

116 Railway Reform In The ECE Region, United Nations Publication Final Report, ECE/Trans/261, United Nations 2017 32

117 Alexandersson, G. Swedish Railway Policy in the EU environment. Railway organisation and financing. 2013.

state owned infrastructure manager, while the remainder is administered by companies, local authorities or associations.¹¹⁸

As a result of the reforms since vertical separation, although not initially open to competition, the railway market has now benefited from the entry of freight and passenger operators, introducing new services and improved service quality. Further, the performance of the railway has improved, with the number of passenger trains running on time increasing to over 90%.¹¹⁹ SJ turned a loss of US\$122 million in 1988 into a profit of US\$72 in 1995.¹²⁰ Today SJ, is the most efficient railway in Europe.¹²¹

Mexico

In the 1980's, Mexican railways was suffering from poor productivity, significant operating deficits and dwindling freight volumes. Rail freight volumes had by the mid-1980s faced a decline in both volume and market share as competition from road freight transport increased.¹²² By the early 1990's many of Mexico's state owned monolithic company the Mexican National Railways (FNM) operational indicators pointed to inefficiency, low levels of safety, overstaffing, and low productivity.¹²³ In 1995, the failing FNM was restructured and conceded to private freight train operators.¹²⁴ The state retained ownership of the network but the track is maintained and upgraded by vertically integrated rail companies under long term concessions.¹²⁵ The concessionaires enjoy exclusive rights to serve their territories, structured geographically to ensure competition to serve key markets and complemented by rights of access to specific parts of each other's networks. In an effort to improve FNM financial standing and productivity, commercially oriented structural changes were announced. This initiative led to higher labour and locomotive productivity as well as improvements in FNM's financial performance, but the overall outcomes were insufficient to turn around the organisation.¹²⁶

The Mexican government faced an underperforming FNM and heavy competition from trucks and the need to reduce public spending due to the 1994/5 financial crisis.¹²⁷ The government's railway reform objectives were to transfer the management of the railway from the publicly run FNM to the private sector; design an industry structure that encourages rail to rail market competition among vertically integrated operators; enable the railways to gain stable financial footing and minimize government subsidies in the railway sector.¹²⁸

The remedy adopted was to break up FNM and offer concessions to run the railways. In the mid 1990's the government chose a fully commercial concessioning. The government decided

118 Banverket, Annual Report. 2009. pg. 2.

119 European Parliament. Impact of separation between infrastructure and management operations on the EU Railway sector. 2011. pg 44.

120 Andres Lundberg. Restructuring of the Swedish State Railways. Japan Railway and Transport Review. September 1996. pg. 23.

121 Lundberg, A. Restructuring of the Swedish State Railways. Japan Railway and Transport Review. September 1996. pg. 23.

122 Villa, J.C. and Sacristan-Roy, E (2012). Privatisation of Mexican railroads: fifteen years later. Research in Transportation Business and Management 6(2013). pp. 45-50.

123 OECD. Structural reform in the Rail Industry, 2005 pg. 197.

124 FNM was the exclusive operator of the railroad system. Restructuring begun with the Law on the Regulation of rail services.

125 Stephen Perkins Regulation, Competition and performance of Mexico's freight railways, Network Industries Quarterly, vol 18, No. 4 2016. pg. 21.

126 Campos, J. Lessons from railway reforms in Brazil and Mexico. Transport Policy 8 (2001), pp 85-95.

127 World Bank. Railway reform: toolkit for improving rail sector performance. 2011. pg. 469.

128 World Bank. Railway reform: toolkit for improving rail sector performance. 2011. pg. 470.

to award 50 year exclusive, vertically integrated concessions.¹²⁹ The government sought to generate revenue from selling the concessions and received approximately USD 3 billion.

By reforming the law to establish a conducive legal environment for private sector participation in the rail sector, the government set a clear framework on how concessions should be and attracted serious investors into the bidding process. Since concessions took place, freight tariffs have been competitive compared to those in the US and Canada. Subsidies from the Mexican government in the rail sector have been entirely eliminated.¹³⁰ Productivity has improved markedly and across the board since the concessionaires took over from FNM.¹³¹

Investment made by the private sector included renewal of rolling stock, while reducing the fleet size and yet still keeping up with growing market demand through the purchase of higher horse power locomotives to replace older models. At the same time, productivity of the existing and new equipment was augmented by better maintenance and management practices, introduced in some cases by management from the U.S. and Canadian railways. Further, capital expenditure in track and equipment equating to almost twice as much as was committed in the concession agreements. Altogether, over US\$9 billion has been invested in Mexico's railway network since the reform.¹³²

South Africa

For much of the 20th century, rail transport in South Africa was a vertically integrated state monopoly under ministerial control with the government owning the rail infrastructure across the country, with different providers across freight and passenger services.¹³³ Transnet is a state-owned company delivering freight transportation services. It owns, operates and maintains some the country's principal transport assets through its freight rail, engineering, national ports authority, port terminals and pipelines divisions.¹³⁴ The Passenger Rail Agency of South Africa is a state-owned enterprise responsible for most passenger rail services in South Africa. Some 250 small operators have emerged over time.¹³⁵

Transnet Freight Rail owns and operates the country's only long-distance rail network, and also owns and operates virtually all freight locomotives and wagons. By virtue of it being the only rail freight operator, with limited local exceptions, the *de facto* market structure is monopolistic. It is understandable that Transnet, given its *de facto* monopoly status and against the background of its main objective, taking into account its developmental role, of maximising profit and shareholder value, ostensibly sees no need for, nor appreciates the value of extensive or realistic modelling or planning for the whole of freight rail as a transport mode.¹³⁶

While rail is a well-established industry in South Africa, it has experienced challenges over time that have impacted adversely on the industry's overall development and the socio-economic impact it should have had on the economy. Rail is currently not performing at the level that it should. Its low market share, of less than 20% for general freight and less than 10% for passengers, indicates that rail is not performing at the level that it should. Even in bulk minerals, where rail should be unbeatable, road-going side-tipper interlinks have captured significant market share.¹³⁷

129 Drew, J and Ludewig, J. Reforming Railways. Learning from experience, 2011. pg. 62.

130 World Bank. Railway reform: toolkit for improving rail sector performance. pg. 475.

131 World Bank. Railway reform: toolkit for improving rail sector performance. pg. 475.

132 World Bank. Railway reform: toolkit for improving rail sector performance. 2011. pg. 476.

133 S. Chauke, J. Maluleke. Separation of rail infrastructure ownership from operation: is it a feasible model for the South Africa rail transport industry? 2005. pg 1006.

134 Department of Transport. South Africa. National Rail Policy draft White Paper, 2017. pg 12.

135 Department of Transport. South Africa. National Rail Policy draft White Paper, 2017. pg 13.

136 Department of Transport. South Africa. National Rail Policy draft White Paper, 2017 pg 19.

137 Department of Transport. South Africa. National Rail Policy, Draft White Paper. 2017. pg 14.

Reforms in rail passenger transport in South Africa have provided impetus for more overarching rail reforms which propose structural changes to achieve competition, private-sector investment and quality improvements.¹³⁸

Kenya

Kenya's railway structure is vertically integrated. The railway network in Kenya is owned by Kenya Railways Corporation (KRC), a statutory body established under the Kenya Railways Corporation Act.¹³⁹ KRC is empowered to develop, build and operate rail and inland waterway transport port facilities.

The 2012 Integrated National Transport Policy (INTP) is the policy guiding the development of all transportation subsectors in Kenya. The following objectives in the INTP are particularly relevant for the rail sector:

- (a) Vertical unbundling (separation) of policy making, regulation, and operations. The Government has recognized the problem of multiple roles being played by monopoly statutory bodies and the need for separation of functions to reduce conflicts of interest.
- (b) Embracing private sector participation and competition, moving away from public monopoly in provision of transport infrastructure and services.
- (c) Separation of commercial operations of transport (to be determined by the market) and economic pricing from that of social services obligation (with social service obligations to be funded by government through targeted subsidies). The policy also provides for special consideration to be given to urban public transport which is to be addressed on an integrated basis.
- (d) Encouraging appropriate modal balance in the distribution of traffic, especially in the distribution of freight traffic between road and rail.
- (e) Establishment of an independent regulatory agency for the rail subsector.¹⁴⁰

In 2013, the Government started the process to study and develop a new legal and regulatory framework for the railway subsector. CPCS Transcom International Limited (CPCS) was chosen to develop the proposals.

CPCS presented three options for the future organization of the railway subsector of Kenya.

Option 1: Integrated concessionaire financing the maintenance of the infrastructure. This option is virtually identical to the existing structure, with the Government of Kenya retaining ownership of all infrastructure, and operations and all maintenance carried out by a concessionaire.

Option 2: Vertical separation between infrastructure management and train operations. Under this option, the railway industry would be vertically separated into a public infrastructure owner/manager and a train operating company, with separate freight and passenger concession agreements.

Option 3: Vertical and Horizontal Separation ("open access"). Under this third option, there is both vertical separation of infrastructure from train service operation, and horizontal separation of train services, with multiple train service operators through open access

138 Kuthale Projects. Comprehensive Regulatory Framework for setting up the rail economic regulator. 2007.

139 Cap 397 Laws of Kenya.

140 CPCS Transcom International Limited. Kenya Railways Legal and Regulatory Framework Study. Final Report. Vol. 1. 2018. pg.7.

or mandatory access. Under this option, the Government would retain ownership and management of the infrastructure, including all maintenance.¹⁴¹

Option 4 leads to on-rail competition (competition between rail companies on one line), assuming more than one company seeks to operate on the track.

Few governments in Africa have implemented this “European” model of separate infrastructure and multiple private train operators because:

- (a) Traffic is generally not dense enough to support intra-rail competition on the same lines and there would be loss of economies of scale; and
- (b) Rail already faces fierce competition from road, so adding intra-rail competition would severely limit the interest of private sector operators in running a rail service.

CPCS observed in 2013 that at that time and for the foreseeable future there is not enough traffic to implement this open access option. However, this option provides probably the best regulatory framework to implement a fully competitive rail system. Setting-up a formal legal and regulatory framework that would permit open access would send a message to the market that the sector is now competitive, as it will provide for the possibility of multiple operators and then let the market decide whether/when this occurs.¹⁴²

In March 2017, the Government chose a legal and regulatory framework to accommodate an open access regime for the rail sector in Kenya.¹⁴³ The decision was premised on:

- (a) The fact that the LAPSSET and Mombasa-Nairobi/Kampala Railway networks will be linked within Kenya through Nairobi-Isiolo Link and Lamu-Mombasa Link, and therefore the railway operators would be able to move on any track.¹⁴⁴
- (a) The framework should reflect the regional nature of rail transportation in East Africa, including future SGRC links anticipated with neighboring countries. The framework must thus allow for potential operators from other countries to access the Kenyan rail network.¹⁴⁵
- (a) Option 3 would give the Government room to appoint operators for other rail networks.¹⁴⁶

The decision reflects the Kenyan Government’s position to maximize competition and associated transportation options available to shippers, as well as the desire to ensure additional train operating companies – from Kenya or beyond – will be able to operate on the rail system when the system expands within and beyond Kenya’s borders.¹⁴⁷

The general institutional and legislative framework of the railway sector in Uganda is that the railway network is operated by a national railway company (or by those companies respective concessionaires) as vertically integrated rail systems.¹⁴⁸ The strategic policy

141 CPCS Transcom International Limited. Kenya Railways Legal and Regulatory Framework Study. Final Report. Vol. 1. 2018. pg. 15.

142 CPCS Transcom International Limited. Kenya Railways Legal and Regulatory Framework Study. Final Report. Vol. 2. 2018. pg. 17.

143 CPCS Transcom International Limited. Kenya Railways Legal and Regulatory Framework Study. Final Report. Vol. 1. 2018. pg. 17.

144 Mungania H. Brief on the review of the legal and regulatory framework in the railway subsector. A presentation to the Uganda Law Reform Commission. Nairobi, Kenya. 21st August 2019. pg.4.

145 CPCS Transcom International Limited. Kenya Railways Legal and Regulatory Framework Study. Final Report. Vol. 1. 2018. pg. 17.

146 Mungania H. Brief on the review of the legal and regulatory framework in the railway subsector. A presentation to the Uganda Law Reform Commission. Nairobi, Kenya. 21st August 2019. pg. 4.

147 CPCS Transcom International Limited. Kenya Railways Legal and Regulatory Framework Study. Final Report. Vol. 1. 2018. pg. v., pg. 17.

148 CPCS Transcom International Limited. Kenya Railways Legal and Regulatory Framework Study. Final Report. Vol. 1. 2018. pg 71

objectives of the draft national railway policy include to ensure that transport services are globally competitive and positioned to facilitate faster industrialization and to revitalize Uganda's rail transport industry substantially increasing its performance, turning around its decline and maximizing its utilization.¹⁴⁹

The generic industry model or railway archetype (like Uganda's current model) that includes all of the features and alternatives embodied by most of the world's national state-owned railways up to the 1970s:

- (i) it is under full public ownership;
- (ii) it operates as department of a ministry, or a public entity with an administrative reporting relationship to that ministry;
- (iii) it offers passenger and freight transport services;
- (iv) it is vertically integrated in managing railway infrastructure and train operations; and
- (v) it undertakes a range of non core railway activities.¹⁵⁰

Uganda's railway structure is vertically integrated. As illustrated with reform examples, other jurisdictions are moving away from the vertically integrated structure to a vertically separated structure to improve the performance and efficiency of their railways. The United Kingdom, Sweden, Netherlands, South Africa, Kenya are countries that operate or are in the process of vertically separating their railway industries.

Uganda should consider moving to a vertically integrated railway in order to improve its performance and efficiency by implementing reforms that support a vertically separated railway.

2.3. Harmonisation of rail frameworks in the EAC region

In order to overcome transit transport constraints affecting them then, the governments of Burundi, Kenya, Rwanda and Uganda decided in 1985, to negotiate a treaty, The Northern Corridor Transit Agreement (NCTA) with a view of promoting an efficient, cost effective and reliable transit transport system to the hinterland from the coastal port city of Mombasa. The Democratic Republic of Congo became a contracting state of the NCTA in 1987.¹⁵¹

The objectives of the NCTA are to:

- (i) Ensure freedom of transit among the member states;
- (ii) Safeguard the right to access to or from the sea of landlocked countries;
- (iii) Develop and integrate regional transport facilities and services; and
- (iv) Facilitate inter-state and transit trade.¹⁵²

The Uganda Railways Corporation Act, Cap. 331 was enacted in 1992 to provide for the establishment of the URC as an autonomous agency to handle the responsibilities related to railway transport both in Uganda and in the East African region. The provisions of this Act were borrowed from the East African Railways Act.

149 Draft National Railway Policy, 2018. pg 24.

150 World Bank. Railway Reform Toolkit for improving Rail Sector Performance, 2011. pg 66.

151 Ministry of Works and Transport. Legal, Regulatory and Institutional Report, 2014. pg. 14

152 Ministry of Works and Transport. Legal, Regulatory and Institutional Report, 2014. pg. 14

In 2006, the Uganda Railways Corporation leased off the management of railway lines to Rift Valley Railways (RVR) for two decades in an effort to broaden and avail affordable transport, provide efficiency in road maintenance costs by introducing new axle load regulations, factoring in standards in railway safety and complying with environmental regulations. The takeover of the century-old line by RVR became necessary in order to restructure the railway service to enhance its capacity for revenue generation.¹⁵³ RVR acquired a 25-year concession to operate both of the Uganda and Kenya Railways stretching from the Port of Mombasa to Kampala in Uganda.

The treaty establishing the East African Community provides a comprehensive and elaborate legal framework for harmonisation of rail operations in the region including mechanisms for ensuring compliance by Partner States with regulations, directives and policies of the community and a framework for establishment of institutions to regulate rail operations at the regional level. Article 89 of the EAC treaty requires partner states to inter alia, improve and expand the existing transport and communication links and establish new ones as a means of furthering the physical cohesion of the Partner States, so as to facilitate and promote the movement of traffic within the community. To this end Article 89 (b) enjoins partner states to construct, maintain, upgrade and integrate, among other modes of transport, railways. Article 92 (2) specifically requires Partner States to make initiatives to coordinate the railways sector in the EAC by adopting common policies, common safety rules, common standards, harmonised procedures, and integrated operations.

A bilateral agreement signed between Uganda and Kenya in 2009, establishes the joint legal and policy framework for implementation of the standard gauge railway project. Under this agreement, each country is separately constructing the section of the standard gauge railway that falls within its area of jurisdiction, although the agreement calls for harmonisation in the legal and policy framework of the two countries, as necessary implementation of this project.

The second EAC Development Strategy 2006-2010 had as its objectives the restructuring of railways using a harmonized approach in the then three partner States in the areas of ownership, management, infrastructure, financing and investment, national legislation and human resources. The Strategy recommended that an East African Railways Master Plan be developed and implemented and that the existing railways should be concessioned.¹⁵⁴

Following a Trilateral Summit in Entebbe, Uganda in June 2013, an epoch-making Communique was issued, among the major imports of which was to revamp the existing railway network, to construct a new standard gauge railway line and extend it to Rwanda¹⁵⁵ and for joint mobilisation of resources.¹⁵⁶

In 2014, the East African Community Secretariat prepared a working paper for enhancement of the EAC Railway Sector Enhancement Project. The paper draws from the recommendations of the East African Railways Master Plan (EARMP) study which recommended adoption of guidelines for common transport policy covering all transport modes, integration of technical standards of the national rail systems, introduction of the EAC rail licensing system, creation of an EAC railway unit and adoption of guidelines for

153 National Bureau of Statistics. Transportation Infrastructure. Transport Infrastructure Policy. A Case study of Nigeria and Uganda. Slide 53. 2017

154 Ministry of Works and Transport. Legal, Regulatory and Institutional report. 2014. pg ix.

155 At a subsequent summit Bujumbura and Juba were incorporated.

156 Ministry of Works and Transport. Legal, Regulatory and Institutional report. 2014. pg 16.

the railway sub-sector to cover safety, infrastructure financing, community level certification requirements for all freight services, private participation and provision of common rail statistics.

According to the East African Railways Master Plan, different laws relating to railways and different regulatory frameworks and licensing systems for railways are some of the barriers to integration.¹⁵⁷ The EARMP notes the need to increase financial efficiency in the railway subsector; the railways must have a financial structure that allows effective, independent management. Railway companies should be run on a commercial basis in accordance with the principles that apply to commercial companies.¹⁵⁸ There is a need to introduce market forces in the railway sub sector by progressively opening up the rail freight market and, in the long term, international passenger transport service market.¹⁵⁹ Thirdly, the mater plan notes the need to adopt comprehensive guidelines on safety, infrastructure financing, passenger rights and provision of common rail statistics.¹⁶⁰

The EAMP was expected to achieve realisation of harmonization of national legal and administrative regulations.¹⁶¹

The governments of Kenya and Uganda signed a memorandum of understanding in October 2008 in Nairobi, Kenya, to construct the SGR from Mombasa to Kampala. Subsequently, a bilateral agreement was signed by the respective ministries dealing with railways on October, 2, 2009. The SGR project provides for connection of Mombasa to Malaba. From Malaba, the route is expected to continue onward to Kampala. Within Uganda, branch lines are also being considered to Kasese and Pakwach.¹⁶²

To further facilitate development and operationalisation of a seamless railway network from Mombasa to Kigali and Juba, the 3rd Joint Communiqué of the Summit of the Northern Corridor Integration Project (May 2014) directed the Partner States to develop a Standard Gauge Railway Protocol for the development and operations of the Standard Gauge Railways. The Protocol was signed by Kenya, Uganda, South Sudan and Rwanda in May 2014. In August 2015 Kenya and Uganda signed a bilateral agreement on rail development. In November 2016 Kenyan and Ugandan Ministers signed a further bilateral agreement on a seamless Standard Gauge Railway system.¹⁶³

In 2009, the African Union agreed on the railway policy framework to interconnect Africa with the Standard Gauge Railway.

This study reviewed the model of railway management under the URC Act with the view of harmonizing the legal and regulatory rail framework with the EAC railway legal and regulatory framework and other regional commitments.

157 East African Railways Master Plan Study Final Report. pg. 25.

158 East African Railways Master Plan Study Final Report. pg. 54.

159 East African Railways Master Plan Study Final Report. pg. 54.

160 East African Railways Master Plan Study Final Report. pg. 56..

161 Ministry of Works and Transport. Legal, Regulatory and Institutional report. 2014. pg ix.

162 CPCS Transcom International Limited. Kenya Railways Legal and Regulatory Framework Study. Vol. 2. 2018. pg.44.

163 CPCS Transcom International Limited. Kenya Railways Legal and Regulatory Framework Study. Vol. 2. 2018. pg.44.

2.4. Enhancing private sector participation and competition

Evidence suggests that substantial cost savings can be achieved by creating competition and private participation in supply of the railway infrastructure facilities and train services.¹⁶⁴ Many countries are therefore seeking economic reforms aimed at creating a competitive market-based transport industry. The critical weakness of the traditional way of providing transport facilities and services has been the absence of any structure of incentives to align the interests of the supplier with the public need. It is now widely felt that the potential loss of patronage, earnings and ultimately employment resulting from a failure to respond to consumer demand in competitive markets, is the most powerful means to force suppliers to respond to consumer requirements.¹⁶⁵

Beesley¹⁶⁶ argues that competition is the most important mechanism for maximising consumer benefits, and for limiting monopoly power. Its essence is rivalry and freedom to enter a market. Competition serves the public interest by inducing suppliers to become more efficient and to offer a greater choice of products and services at lower prices. When competition exists in market-based economies, two or more different suppliers compete with each other to sell their goods or services to customers. Competitive suppliers may offer lower prices, more or better quality of service to attract customers. In a competitive market, individual suppliers lack “market power”.¹⁶⁷ They cannot dictate market terms, but must respond to the rivalry of their competitors in order to stay in business. The existence of competitive threats and rivalry amongst both existing and potential suppliers will increase the contestability of a market across all its dimensions including— price, quality and innovation. In general, the goal of competition policy is to promote, protect and preserve competition as the most appropriate means of ensuring the efficient allocation of resources.¹⁶⁸

This study sought to explore the available opportunities of increasing private sector participation and the potential benefits of introducing competition into the railway industry.

2.5. Dispute resolution for railway related matters

Among the key components for the regulation of a railway system is licensing, safety and dispute resolution.¹⁶⁹ Review of the URC Act indicates that there is no mechanism for Alternative Dispute Resolution (ADR). The necessity and benefit of ADR for consumer issues is recognised today not only by consumer organisations, national authorities and European institutions, but increasingly in the business sector.¹⁷⁰

Indeed, ADR bears advantages for all sides: for consumers; a chance to find a solution instead of giving up on a complaint they might have about railways, for railways for, the

164 Economic and Social Commission for Asia and the Pacific. Restructuring of Railways. 2003. pg 8.

165 Economic and Social Commission for Asia and the Pacific. Restructuring of Railways. 2003. pg 8.

166 Beesley, M E. 1 997. Privatisation, Regulation and Deregulation. Routledge. London

167 Market Power is generally defined as the power to unilaterally set and maintain prices or other key terms or conditions of sales; that is, without reference to the market or to the actions of competitors.

168 The degree of competition or rivalry in a market or sector will depend on various factors including its structure and the behaviour of firms. At one extreme, highly competitive markets are characterised by a multiplicity of small firms competing on all aspects of price and quality. At the other extreme, monopolistic markets exist when production is concentrated in a few firms with the possibility of open or tacit collusion amongst them on matters such as price, output and the quality of provision.

169 Raghuram, G. “The Transport sector,” India Infrastructure Report. Oxford University Press. 2001.

170 Mediation and ADRs: key tools for both customers and railways, Brussels, 22 April, see http://www.cer.be/sites/default/files/press-release/130422_CER_EDF_EPF_press_release_ADR.pdf.

opportunity to demonstrate their interest in their customers' concerns; and for enforcement authorities, being at the heart of citizens' concerns as well as balancing business interests.¹⁷¹

Most complainants continue to be reluctant to engage in a long judicial procedure and would prefer a simpler process arbitrated by an objective third party.¹⁷² In order for consumers complainants to exploit fully the potential of the internal market, ADR should be available for all types of disputes arising from railway operations.¹⁷³

With ADR, more consumers can assert their rights before qualified and efficient ADR bodies and strengthen consumers' confidence that complaining to railway service providers can lead to satisfactory outcomes. If a consumer's initial claim is not handled satisfactorily, they can go to ADR to resolve the matter without launching legal proceedings.¹⁷⁴ Provision for ADR demonstrates the sector's willingness to find amicable solutions out of court.¹⁷⁵

Review of legislation from other jurisdictions indicates that the use of alternative dispute resolution mechanisms has been promoted and specifically provided for in enabling laws. Canada, the UK, Norway, Germany and Austria have put in place strong ADR bodies to handle railway transport matters.¹⁷⁶

The British disputes resolution system is decentralized to the railway industry. The relationships between the infrastructure manager and the railway undertakings are defined in contracts and regulated by an independent regulator. The system is characterized by the prevention of the conflicts, through many rules decided inside the industry.¹⁷⁷

Under the Canadian National Transportation Policy, competition and market forces, both within and among the various modes of transportation, are the prime agents for ensuring viable and effective transportation services. Regulation and strategic public intervention are used to achieve economic, safety, security, environmental or social outcomes that cannot be achieved by competition and market forces alone. These forms of intervention should not unduly favour, or reduce the inherent advantages of any particular mode of transportation. Canadian regulatory remedies (inter-switching, final offer arbitration, level of service adjudication and arbitration) are available independently of the financial health of rail carriers and are fundamentally designed to provide shippers with additional leverage in their negotiations with railways or with more competitive rail options.¹⁷⁸

To enhance competition where existing competition is not effective the rail regulator, the Canadian Transport Agency (CTA) has the ability to adjudicate issues where more

171 *ibid.*

172 The EU European Consumer Centres Network. *Alternative Dispute Resolution in the Air Passenger Rights Sector*. 2013. pg 3.

173 Rail sector: modifying complaints handling so as to mandate Alternative Dispute Resolution scheme membership, 26 July 2018.

174 The European Consumer Centres Network. *Alternative Dispute Resolution in the Air Passenger Rights Sector*. 2019. pg. 4

175 The EU European Consumer Centres Network. *Alternative Dispute Resolution in the Air Passenger Rights Sector*. 2013. pg 3

176 Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).

177 Dominique Bouf, Yves Crozet and Julien Lévêque. *Vertical Separation, Disputes Resolution and Competition in Railway Industry*. 9th Conference on Competition and Ownership in Land Transport, 5-9 September 2005, 14 Lis-bonne, France.

178 *Regulatory Governance of the Rail Sector in Mexico, State of Play and Reforms of the Rail Sector of Mexico* accessed on <https://www.oecd-ilibrary.org/sites/42577d33-en/index.html?itemId=/content/component/42577d33-en>

competitive access is requested. The CTA relies much more heavily on alternative dispute resolution mechanisms: facilitation, mediation and arbitration.¹⁷⁹ The Canada Transportation Act has provisions that authorize the CTA to conduct mediation and/or arbitration of matters within the jurisdiction of the CTA, if requested by all parties to the dispute.¹⁸⁰ Shippers are allowed to complain to the CTA about a railway's level of service or unreasonable charges or terms; to avail themselves of voluntary alternative dispute resolution through the CTA; to obtain Service Agreements from railways; and provides for binding arbitration in the event of disagreements.¹⁸¹ The CTA also provides facilitation where by a CTA case officer assesses an issue may lead to an informal exchange between the parties, usually by phone or email, prior to a more formal process.¹⁸²

Over the past 5 years in respect of freight rail, there were on average 15 disputes resolved by facilitation and six by mediation per year – frequently concerned with noise and vibration.¹⁸³

This study examined the possibility of amending the law to provide for the adoption and use of alternative dispute resolution mechanisms like arbitration, mediation, or negotiation in addressing complaints or disputes arising from operation of railway transport in Uganda.

2.6. Lack of accident and incident investigation body

The URC Act contains limited provisions for reporting and investigating railway accidents and incidents. Section 34 of the URC Act only makes reference to the power to enter land to prevent accidents by clearing obstructions or carrying out works to prevent the occurrence of accidents. It states that the Corporation or any authorised employee may, for the purpose of preventing the occurrence of any accident, preserving the safe operation of any transport services provided by the Corporation or repairing any damage caused by the accident enter upon any land:—

- (a) to cut down or remove any tree or other obstruction, not being a building, which obscures the view of any fixed signal or which is likely to cause any obstruction or any danger to any such transport services; and
- (b) execute any other works necessary to prevent the occurrence of any accident or to repair any damage caused by any accident.

A provision which allows the president to appoint a commission of inquiry to look into a matter of public welfare, such as railway accident, can be found in the Commissions of Inquiry Act. Under the Act, the President may issue a commission appointing one or more commissioners and authoring those commissioners, or any quorum of them mentioned in the commission, to inquire into the conduct of any officer in the public service of Uganda, the conduct of any chief, the conduct or management of any department of the public service or of any public or local institution, or into any other matter in which an inquiry would be for the public welfare.¹⁸⁴

179 Organisation for Economic Cooperation and Development/International Transport Forum. Establishing Mexico's Regulatory Agency for Rail Transport. 2016. pg. 27.

180 Cairns, M. Staying on the right track: a review of Canadian freight rail policy. 2015. pg. 28.

181 Cairns, M. Staying on the right track: a review of Canadian freight rail policy. 2015. pg. 27.

182 Cairns, M. Staying on the right track: a review of Canadian freight rail policy. 2015. pg. 28.

183 Cairns, M. Staying on the right track: a review of Canadian freight rail policy. 2015. pg. 28.

184 Section 1(1) of the Commissions of Inquiry Act, Cap 166.

The Uganda Railways Bill, 2007 contains provisions on accident investigations.¹⁸⁵ It provides the procedures for accident investigations by a regulator who may conduct an investigation where an accident causes serious injury or loss of life.¹⁸⁶ The Chief Regulatory Officer creates an accident investigation committee to conduct an investigation into an accident that causes serious injury.¹⁸⁷ The composition of the committee is provided for in clause 29 (4).¹⁸⁸ Where the Minister sees that there are grounds for an independent investigation of an accident, the Minister may appoint a qualified person to exercise the powers of the railway regulator and conduct the investigation.¹⁸⁹

In the UK a railway accident may be the subject of an “investigation” under section 14 (2) (a) of the Health and Safety at Work Act 1974 which is normally carried out by the Health and Safety Executive under the direction of the Health and Safety Commission.

The UK Railways and Transport Safety Act, 2003 established the Rail Accident Investigation Branch (RAIB) as the independent investigation body for UK’s railways.¹⁹⁰ The creation of this specialist investigative branch followed the 5th October 1999 collision at Ladbroke Grove Junction in West London in which a high-speed passenger train collided with a multiple unit train travelling in the opposite direction. Following this accident and earlier incidents, recommendations were made to improve railway safety through the creation of a body that is independent of all the parties with an interest in the accident, to give greater transparency to the investigation process.

The UK had provisions that regulate accident investigations contained in the Health and Safety at Work Act, 1974, which is carried out by the Health Service Executive under the direction of the Health and Safety Health Commission. Section 14 (2) (a) of the Act states that the Commission may at any time direct the executive or authorise or any other person to investigate and make a special report on any matter to which this section applies. In the case of the rail industry this is an addition to a formal inquiry or formal investigation carried out under Group Standard GO/RT 3434/3, which replaced the British Rail Standard in June 1997.

According to an internal HMRI document of 1999, investigations serve a variety of purposes including:

- (i) ensuring that the circumstances of the particular incident are identified and rectified, and identifying any breaches of legislation;
- (ii) assessing the quality of standards and safety management generally (particularly in relation to the railway operator’s safety case) and motivating management generally towards improved health and safety standards; and
- (iii) providing information to assist HMRI/HSE to formulate policy, guidance, standards and also to satisfy expectations from the workforce, public, Ministers.¹⁹¹

Among the parties to the Inquiry there was what Counsel to the Inquiry described as “overwhelming” support for setting up of an independent body for the investigation of

185 Part VI Accident Investigations.

186 Clause 29 (2).

187 Clause 29 (3).

188 Membership of the committee includes, the railway regulator, the state-owned company; the ministry responsible for labour, the ministry responsible for occupational safety; the national environmental management authority and the ministry responsible for justice.

189 Clause 29(7). The Uganda Railways Bill, 2007.

190 Section 3 (3).

191 The Ladbroke Grove Rail Inquiry Report. 2001. pg 127.

railway accidents and incidents, hence relieving the HMRI of this responsibility.¹⁹² The Association of Train Operating Companies proposed the creation of a Railway Accident Investigation Branch, which would be similar to the Air Accidents Investigation Branch and the Marine Accident Investigation Branch, and, like them, funded by Government. The Rail Accident investigation branch would investigate accidents and only the more serious incidents. Other incidents would be investigated by the Ministry under a form of delegation.¹⁹³

The principal argument which was advanced in favour of this proposal was that of structural conflict, that it was inappropriate for the safety regulator to carry out the function of investigation since it may be necessary to examine the decisions of the safety regulator itself.¹⁹⁴ As the Rail Regulator observed in his statement of case:

“... a safety investigator should be free, where necessary, to criticise the safety regulator if shortcomings on its part have contributed to an accident or its consequences. If the investigator and the regulator are one and the same, it may be difficult to convince the public that this aspect of the investigation will be pursued with the necessary vigour”.¹⁹⁵

Further review of railway accident investigative approaches in some countries highlights the different approaches to investigations. In Mexico in case of a railway accident, the Ministry of Transport sets up an *ad hoc* committee to investigate the accident.¹⁹⁶ Kenya decided against setting up a permanent investigative body and such matters are dealt with on an *ad hoc* basis.¹⁹⁷ In South Africa a railway operator is required to investigate every railway occurrence that takes place directly or indirectly in connection with its railway operations and should identify the root cause(s) within a reasonable time after that occurrence.¹⁹⁸ The Rail Safety Regulator may also on its own accord, or upon receipt of a directive from the Minister, be obliged to investigate any railway occurrence for the purposes of preventing similar occurrences in the future.¹⁹⁹ The Surface and Marine Transport Regulatory Authority in Tanzania is required to investigate accidents and incidents prejudicial to railway safety.²⁰⁰ Railway accidents may also be investigated internally by railway operators and the results reported to the Chief Inspector of Railway Safety, by the Chief Inspector of Railway Safety or by an inquiry by order of the Minister.²⁰¹ In France the independent investigating body is the Land Transport Accident Investigation Bureau.²⁰²

The study sought to determine whether the URC Act should provide for the establishment of an independent railway accident and incident investigative body to deal with complaints relating to railway accidents and related incidents.

192 The Ladbroke Grove Rail Inquiry Report. 2001. pg 127.

193 The Ladbroke Grove Rail Inquiry Report. 2001. pg 127.

194 The Ladbroke Grove Rail Inquiry Report. 2001. pg 128

195 The Ladbroke Grove Rail Inquiry Report. 2001. pg 128

196 Article 202bis of the Railway Service Regulation.

197 CPCS Transcom International Limited. Kenya Railways Legal and Regulatory Framework Study. Vol. 1. 2018. pg 64.

198 National Railway Safety Regulator Act, No. 16 of 2002. Section 38(1). South Africa.

199 National Railway Safety Regulator Act, No. 16 of 2002. Section 38(4). South Africa.

200 Section 27920(b) of the Railways Act, 2002. Tanzania.

201 Regulation 4(1) Railway Accident Investigation and Reporting Regulations.

202 Decree of 26 January 2004. The current enabling legislation of the Bureau is to be found at Articles L. 1621-1 to L. 1622-2 and R. 1621-1 to R. 1621-26 of the Transport Code.

CHAPTER THREE METHODOLOGY

3.1 Methodology

This study was qualitative. The qualitative research method is primarily for exploratory research. This method helped to uncover trends in thought and opinions about the railways sector and elicit insights into the problems and issues surrounding the railways sector Uganda, issues which were interrogated to develop ideas for reform of the URC Act.

3.1.1 Sample Selection

The study population comprised a range of stakeholders. The respondents for the qualitative study were purposively sampled. Purposive sampling facilitated selection of the appropriate respondents.

3.1.2 Data collection

The qualitative data was collected through documentary review, preliminary consultations, technical working group meetings and a comparative study.

(a) Documentary review

This entailed review of available literature including the draft Railways Policy, legislation including the URC Act, the NDP II and Vision 2040, research reports, and government position papers, policy briefs, regional agreements, legislation and policies of other jurisdictions, The information gathered from these documents formed the basis for generating issues for the review and proposals for amendment of the URC Act.

(b) Preliminary consultations

The Commission conducted consultations with agencies and institutions that are directly involved in the railways sector. The main consultations were undertaken with the URC which is the main implementer of the Act, the Ministry of Works and Transport which is the line ministry and with the Standard Gauge Railway Company that has been merged with the URC.

The objective of these consultations was to get a better understanding of the operations and administration of railways in Uganda and to contextualize the issues and challenges faced in implementation of the URC Act. These consultations assisted the Commission to concertize the issues for reform.

(c) Technical Working Group meetings

The Commission constituted a technical working group (TWG) comprised of key stakeholders who are knowledgeable on the subject matter and/or persons involved in the railway industry. The TWG provided guidance during the study and provided the technical expertise required to accomplish the objectives of the study. The task of the TWG included

participation in the review and discussion of the issues for review and making input in the proposals for reform.

The TWG included representatives from Uganda Railways Corporation, Ministry of Works and Transport, Standard Gauge Railways Project, Ministry of Justice and Constitutional Affairs, Office of the Prime Minister, National Planning Authority (NPA), Kampala City Council Authority (KCCA), National Environmental Management Authority (NEMA), Uganda Law Society (ULC), Private Sector Foundation (PSF), Uganda Revenue Authority (URA), Ministry of Finance, Planning and Economic Development (PED), Ministry of East African Community Affairs (EACA), Uganda Police Force (UPF), Justice Law and Order Sector Secretariat (JLOS), Parliamentary Committee on Physical Infrastructure (PCPI), Uganda National Roads Authority (UNRA), Ministry of Lands, Housing and Urban Planning (MLHUP), Ministry of Foreign Affairs (MFA), Uganda Manufacturers Association (UMA), Association of Registered Engineers (ARE), Ministry of Local Government (LG), The Privatisation Unit and academia.

(d) Comparative study

A comparative study was undertaken to examine the reforms that the Kenyan government is proposing regarding the railway industry. Kenya was chosen because its railway legislation, the Kenyan Railways Corporation Act, Cap. 397, is similar to the URC Act and in 2013 the Kenyan government started the process of reviewing the legal and regulatory framework for Kenya including the Kenyan Railways Corporation Act. The Commission discussed with Kenyan stakeholders' proposals that were made at the end of the Kenyan railway sector review in 2018.

(e) Consensus building consultations

The Commission conducted wide consultations with stakeholders to get in-depth understanding of the issues and build consensus on the proposals for reform. These took the form of individual meetings, focus group discussions and workshops.

CHAPTER FOUR FINDINGS AND ANALYSIS

4.1 Introduction

This chapter contains findings related to the legal framework, management and regulation of railway affairs, private participation in the railway sector, establishment of accident and incident investigation body and the possibility of the use of alternative dispute resolution as a mechanism for dispute settlement in railway matters. The chapter provides an anchor for legal and policy recommendations. The findings are based on views gathered from preliminary consultations, technical working group meetings, workshop, literature review and comparative analysis of legislation and practices from other jurisdictions.

4.1.2 The outdated regulatory framework

(a) Conflicting and duplication of roles

The objects of the URC include the construction, operation and maintenance of railway, marine and road services both in and outside Uganda for the carriage of passengers and goods. This is an overlap because road construction operation and maintenance is the responsibility of the Uganda National Road Authority and the Ministry of Works and Transport or district, urban or local authorities.

A respondent at a consultative workshop observed that UNRA finds this as a challenge because another government agency is performing its mandate. With an increasing active railway transport subsector there will most likely be conflict between the roads and railway agencies performing which are similar roles. The role of one government agency should clearly be distinct from the role and mandate of another agency. There should be no duplication of mandates.²⁰³

Recommendation

The railway development agency should develop and maintain railway infrastructure.

(b) Composition of the governing body

Careful examination of the Act, in particular section 8 (1) indicates that whereas the governing body consists of a board of directors comprising of the chairperson, managing director and seven other directors, there is no representation from Ministry of Works and Transport. This scenario is irregular considering that Ministry for Works and Transport is the line Ministry for URC. In Kenya, the Railways Corporation falls under Ministry of Transport. The ministry is responsible for supervision of the Corporation and plays another crucial role concerning licensing of railway operators.²⁰⁴

203 Uganda Law Reform Commission consultative workshop to review the Uganda Railways Corporation Act, Cap 331. Kampala on 14th August 2019.

204 Kenya Railways Corporation study report. 2019.

The Act should be amended to allow for representation of the Ministry of Works and Transport on the governing body of the Corporation.

Recommendation

Section 8 (1) of the URC Act should be amended to allow for representation of the Ministry of Works and Transport on the governing body of the Corporation.

(c) Frequency of meetings by URC board

The URC Act provides that the board shall meet ordinarily for the dispatch of business once in every month at a place and time appointed by the chairperson.²⁰⁵ It is not practicable for a board to have meaningful meetings every month. This provision is not realistic as it does not allow management time to implement previous decisions of the board.

Paragraph 1(1) of the second schedule of the Registration of Persons Act²⁰⁶ provides that the board should meet at least once every three months at such place and at such time as may be decided upon by the board. This is intended to give management ample time to implement previous board decisions and report back on progress.

The Commission also noted that The Code of Corporate Governance states that a board should meet at least once every three months.²⁰⁷

Recommendation

The URC Act should be amended to provide that the URC board should meet at least once every three months.

(d) Unconstitutional provisions in the Act

The above sections prohibit any proceedings against government. The sections purport to protect URC and its properties against any legal consequences of a suit against the Corporation from the findings, sections 52 and 53 are inconsistent with Article 250 of the Constitution.

In Kenya any prohibition of proceedings against government is unconstitutional. In the case **Kenya Bus Service Ltd & another v. Minister for Transport & 2 others**²⁰⁸ court held that provisions that create limitations to proceedings against government are discriminatory and unconstitutional.

However, in the case of **Kampala Capital City Authority v Kabandize and 20 others**²⁰⁹, the Supreme Court discussed whether the limitation period and condition precedent for a statutory notice before an action under the Civil Procedure Act is mandatory. Mwangusya, JSC stated that:

205 Section 11 URC Act, Cap 331.

206 The Registration of Persons Act, Act No. 4 of 2015.

207 Companies Act, Act 1 of 2012. Table F. 6(1). Code of Corporate Governance Boards and Directors.

208 Kenya Bus Service Ltd & another v Minister for Transport & 2 others [2012] eKLR.

209 Kampala City Authority and Kabandize and 20 others. Supreme Court Civil Appeal No. 13 of 2014.

As already stated in this judgment the rationale for the requirement to serve a statutory notice was to enable a statutory defendant to investigate a case before deciding whether to defend it or even settle it out of court. There was a claim that no statutory notice was served but the appellant was able to file a written statement of defence and adduce evidence in support of his defence. There was also nothing that stopped the parties from settling the case if ever a settlement was an option. This is a clear illustration that failure to serve the Statutory Notice does not vitiate the proceedings as the Court of Appeal rightly found. A party who decides to proceed without issuing the Statutory Notice only risks being denied costs or causes delay of the trial if the Statutory defendant was unable to file a defence because she required more time to investigate the matter.

In my view the emphasis should not be on the failure to serve the Statutory Notice but on the consequences of the failure so long as both parties are able to proceed with the case and Court can resolve the issues which the High Court should have done after going through the hearing. Parliament could not have intended that a plaintiff with a cause of action against a Statutory defendant would be totally denied his right to sue even where the defendant knew the facts and was able to file a defence as it was in this case simply because of the failure to file a statutory notice.²¹⁰

Accordingly, the principle would apply to the notice and limitation periods in the URC Act. This decision leads to the conclusion that no constitutional interpretation of the mentioned sections of the URC Act is required. The URC Act should be read in conformity with the constitutional right to access court, with sanction in costs for failure to comply with the procedural requirement.

Section 2 (3) of the URC Act provides that the URC shall be a body corporate may sue or be sued in its corporate name. Litigation against the URC should be taken as action against a government parastatal with the capacity to sue or be sued and not an action against Government represented by the Attorney General.

Recommendation

There is no need to amend sections 52 and 53 of the URC Act because there are sanctions for failure to comply with procedural requirements.

(e) Offences and penalties

The study sought to examine whether the offences and penalties prescribed under the URC Act are adequate. Several provisions of the Act on penalties are obsolete, no longer deter crime and need amendment.

According to participants at a consultative workshop to review the URC legal framework, the URC Act needs to be amended to make it responsive to the current socio-economic circumstances and other related laws.²¹¹ Examples were given that the penalty of one

210 Kampala City Authority and Kabandize and 20 others. SCSA 013 of 2014. pg 9 -10

211 Uganda Law Reform Commission consultation on reviewing the legal framework governing the railway industry. Kampala. 16th September 2018.

hundred thousand shillings for major crimes,²¹² fifty thousand shillings for minor crimes²¹³ or ten thousand shillings²¹⁴ are not realistic in the current times.

It was also pointed out that there is need to deal with the issue of encroachment on the railway reserve. According to one stakeholder, the penalties should be enhanced and the law should require the relevant authority to demarcate the railway reserve."²¹⁵ The SGR project also recommended tougher penalties for acts of criminal trespass and vandalism.²¹⁶

Part XIII of the URC Act should be amended to enhance the fines and penalties therein. This would give the provisions deterrent effect. In the alternative, all the provisions under sections 80-89 could be repealed and new offences be created.

Recommendation

The penalties in the Act should be enhanced to make them more deterrent and relevant to the time.

4.1.2. Harmonisation of railway frameworks in the EAC region

The treaty establishing the East African Community provides a comprehensive and elaborate legal framework for harmonisation of rail operations in the region including mechanisms for ensuring compliance by Partner States to regulations, directives and policies of the community and a framework for the establishment of institutions to regulate rail operations at the regional level. In particular, the EAC Treaty provides for cooperation in infrastructure in a coordinated and harmonized fashion, including development of harmonized standards, regulatory laws and rules for all transport modes with emphasis on rail transport.²¹⁷

The study noted that railway reforms should reflect the objectives of regional agreements. Regional objectives include improving connectivity, efficiency and resilience of regional infrastructure networks, as well as improving, implementing and enforcing regulatory frameworks for transport liberalization.

It was further noted that railways in East Africa are being developed as cross-border, regional transport networks and there is a need to ensure safety, access, affordability and interoperability across such networks. The EAC has adopted a transport strategy (2011), as well as an EAC Railways Master Plan, which includes plans to rejuvenate existing railways serving Kenya, Uganda and Tanzania, and to build new lines to Rwanda, Burundi and South Sudan.²¹⁸

212 Section 80 of the URC Act.

213 Section 81 of the URC Act.

214 Section 83 (6) of the URC Act.

215 Standard Gauge Railway Project submission to the Uganda Law Reform Commission during the preparation of the Law Reform Law Program 2018-2022. February 2018. pg. 3.

216 Standard Gauge Railway Project submission to the Uganda Law Reform Commission during the preparation of the Law Reform Law Program 2018-2022. February 2018. pg. 3.

217 Ministry of Works and Transport. Legal, Regulatory and Institutional Report, 2014. pg. v.

218 CPCS Transcom International Limited. Kenya Railways Legal and Regulatory Framework Study. Vol. 2. 2018. pg.18.

Review of relevant EAC documents²¹⁹ and national policies provided an indication of the priorities of the EAC with respect to railway sector development. The role of the transport sector in contributing to achievement of the vision and mission of the EAC is articulated in the 4th EAC Development Strategy under “Development Objective 5: To Develop Regional Infrastructure to Support the Integration Process.”

On the consultative study trip to Kenya it was established that the general institutional and legislative framework as it pertains to the railway subsector in Uganda and Kenya is not that different due to the fact that both the Kenya Railways Corporation Act and the URC Act derive from the East African Railways Corporation Act and the rail networks of both countries have been operated by the two countries national railway companies as vertically integrated rail systems.

There are however, differences between the two Acts. For example, the position of the Uganda Railway Corporation seems to be more monopolistic than that of Kenya Railways Corporation. Section 19 of the KRC Act allows for the possibility of there being other rail transport service providers besides the KRC. This is not the case in Uganda where the URC Act provides that no rail transport services shall be provided and no rail shall be constructed by any other person other than the URC.²²⁰

With the railway changes being currently proposed in Kenya the basic difference will be that the Uganda Railways will continue to be operated as a vertically integrated system while that of Kenya will be horizontally separated.²²¹ This means that a rail operator from Uganda - URC can run trains on the network owned by Kenya Railways Corporation but no Kenyan train operator will be able to enjoy similar rights on the URC network.²²²

A respondent advised that “the future legal and regulatory framework should reflect the continental and regional nature of rail transportation in East Africa, including future cooperative railway projects with neighbouring countries, like SGR. The framework must allow for potential operators from other countries access to the Ugandan network”. Further, that differences in member countries domestic legislation, regulations, licensing and institutional frameworks are likely impediments to the harmonised performance of the railway sector across national boundaries.²²³

Recommendation

Railway reforms should be harmonized with EAC national and regional railways regulatory frameworks and commitments made to promote cross border regional transport, safety, access, affordability and interoperability across EAC railway networks.

219 Including: the EAC Treaty; the 4th EAC Development Strategy (2011-2016); the EAC Transport Strategy and Regional Road Sector Development Program; the East Africa Railways Master Plan Final Report; and the February 2016 EAC Vision 2050 Report.

220 Section 37 of the URC Act, Cap. 331.

221 CPCS Transcom International Limited. Kenya Railways Legal and Regulatory Framework Study. Final Report. Vol. 1. 2018. pg.71.

222 CPCS Transcom International Limited. Kenya Railways Legal and Regulatory Framework Study. Final Report. Vol. 1. 2018. pg.71.

223 Uganda Law Reform Commission consultative meeting on reforming the URC Act with the Kenya Ministry of Transport, Infrastructure, Housing, Urban Development and Urban Works and the Kenya Railways Corporation. Nairobi, Kenya. 21st August 2019.

4.1.3 Management and regulatory gaps in the law

The study found that stakeholders want an independent regulator to regulate the industry; that this regulator should be provided for in the law. An independent regulator is perceived as an institution that would among many things, regulate licensing, environmental impact, safety and security, pricing (economic regulation) and service levels.²²⁴

A respondent stated that “it would be a good move for the government of Uganda to permit the establishment of an independent regulator. The independent regulator could be the URC and it may be charged with the mandate to carry out safety, security environmental regulation. The other aspects of regulation such as economic regulation, in particular, licensing and costing services could be the mandate of the Ministry of Works and Transport which would in addition also do the overall supervision and management as the line ministry. This would ensure fair and equal access to the railway infrastructure and guarantee equal treatment for all organisations involved in the railway sector.”²²⁵

Findings from the benchmarking exercise in Kenya show that a majority of the respondents discouraged total secession by Government of the railway industry to be managed by the private sector, arguing that the government must have the legal mandate and the tools to ensure that railway transport remains affordable. Respondents expressed fear that the private sector is profit driven and if left unchecked it would operate the railways with a view to making profits rather than as a service for Ugandans.

Another respondent at a consultative meeting in Nairobi, Kenya, stated that: “the Ugandan railway reforms may require changes in the form of economic regulation. For example, the introduction of third-party access creates the need to regulate the conduct of infrastructure supply organisations. Economic regulation may also include the difficult task of maintaining and developing competition in the sector, the functions of the regulator must be clear and enshrined in legislation for railway to ensure easy implementation.”²²⁶

The broad duties of the economic regulator or regulators should be enshrined in legislation. They may include the following:

- (a) regulating tariffs and services, if there is little or no competition;
- (b) developing competition;
- (c) ensuring non-discriminatory access;
- (d) determining access charges; or
- (e) ensuring infrastructure investment.

In some countries, regulations that once protected national monopolies have been replaced by regulations that open access to infrastructure for third parties. These opposing trends are most apparent in the European Union where rail market liberalization has been accompanied by extensive regulation to establish a non-discriminatory market. In many countries in principle, the best regulator is the market, which means that economic regulation should be used only to correct market failures, for example, if competition is absent.

224 Standard Gauge Railway Project submission to the Uganda Law Reform Commission during the preparation of the Law Reform Law Program 2018-2022. 2018. pg. 4

225 Participant at a consultative meeting in Kampala, 14th August 2019.

226 Uganda Law Reform Commission consultative meeting on reforming the URC Act with the Kenya Ministry of Transport, Infrastructure, Housing, Urban Development and Urban Works and the Kenya Railways Corporation. Nairobi, Kenya. 21st August 2019

In Uganda, the legal and regulatory framework on railways reflects the vertically integrated structure of the industry. The Ugandan government has legal responsibility for all aspects of the rail sector: rail policy, development of railway lines, ownership of rail infrastructure, maintenance of rail infrastructure and train operations. The Ministry of Works and Transport formulates policies, plans, sets standards, build capacity, carry out advocacy, regulates, monitors and evaluates the works and transport sector.²²⁷ Through the URC, the government is responsible for both infrastructure and rail services.

There have been attempts to reform the current vertically integrated railway model in Uganda. In 2007, proposed reforms aimed at restructuring the railway sector by providing for the creation of a successor company to the Uganda Railways Corporation²²⁸ and its role in developing the railway sector, regulating and monitoring private sector investment and performance of the railway sector,²²⁹ established the office of rail regulation,²³⁰ investigation of accidents,²³¹ and provisions on commercial rail operations.²³²

In 2012 there was another attempt for reform. The 2012 Railways Bill provided that the Uganda Rail Company Limited will undertake the rail transport functions of the URC; provide rail infrastructure and monitor the performance of rail operators.²³³ There are provisions on rail regulation,²³⁴ safety and environmental rules and practices,²³⁵ investigation of accidents²³⁶ and commercial rail operations.²³⁷

With both attempts cited above, there was the desire to enhance private participation in the railway transport sector, investigation of accidents and to have an independent regulator for the railway sector.

In Kenya, railway reform involves changes to railway ownership or management, institutional and organizational structures, and governance systems. These reforms require establishment of an independent economic and safety regime. For example, the introduction of third-party access creates the need to regulate the conduct of infrastructure supply organisations. It requires a strong regulator, as open access requires strong control over the infrastructure manager, to guarantee fair and non-discriminatory access to the network. Economic regulation may also include the difficult task of maintaining and developing competition in the sector.²³⁸

The 2018 Draft National Railway Policy considers four main areas for management of railway systems. These include: infrastructure management, regulations, passenger

227 CPCS Transcom International Limited. Kenya Railways Legal and Regulatory Framework Study. Final Report. Vol. 1. 2018. pg 68.

228 Uganda Railways Bill, 2007 Clause 6

229 Uganda Railways Bill, 2007 Clause 7.

230 The Bill provided for the creation of an independent Chief Regulatory Officer to, among other functions, regulate rail safety and environmental compliance, regulate discriminatory practices and abuse of monopoly power and monitor and ensure compliance with the provisions of the Bill.

231 Part VI. Uganda Railways Bill, 2007.

232 Part VII. Uganda Railways Bill, 2007. Access to rail services, rates and fares, access to infrastructure and complaints and hearings.

233 Clause 8 of the Uganda Railways Bill, 2012.

234 Part III. A rail regulator is established.

235 Part IV. Uganda Railways Bill, 2012

236 Part VI. Uganda Railways Bill, 2012

237 Part VII. Uganda Railways Bill, 2012.

238 CPCS Transcom International Limited. Kenya Railways Legal and Regulatory Framework Study. Final Report. Vol. 1. 2018. pg 16.

operations, and freight operations. Rail regulation is the most critical in all the above because it significantly affects freight, passenger operation and infrastructure management.

Recommendations

- (i) ***An independent railway regulator should be established.***
- (ii) ***The railway regulator should be responsible for ensuring that all railway operators have fair and equal access to the railway infrastructure and guarantee equal treatment.***
- (iii) ***The railway regulator should regulate safety, economic, technical and environmental aspects of the rail industry.***
- (iv) ***Railway reforms should be in a phased manner to deliver better results on the cost side and impact of the reforms on industry.***

4.1.4. Increasing private sector participation

Many railway activities traditionally reserved for monolithic public railways can be more effectively performed by the private sector. During the past two decades, the large budgetary demands and failure to improve performance have led many governments to consider increasing the role of the private sector and enhanced competition in their railways.²³⁹

The study sought to establish what role the private sector could play in the railway subsector in Uganda and what reforms can be undertaken in the legal and management framework that would facilitate involvement of the private sector in the railway industry.

Several forms of private participation were identified: Public Private Partnerships (PPP), rail concessions and franchises, contracting and outsourcing, service management contracts and private railways.²⁴⁰

Governments worldwide have reformed state railway departments and agencies in an effort to reduce costs, improve services, and realize more effective investments. Revitalizing rail transport takes fresh approaches and often requires large capital infusions. Encouraging private sector participation is a dual-purpose strategy that seeks not only investors but also private sector operators, whose experience and skills can sharpen the commercial focus of railway enterprises. Private sector capital is typically more expensive than government financing, but the commercial discipline and expertise that comes with private sector participation can lead to increased railway productivity and efficiencies, ultimately leading to reduced financial risk and costs to the government.²⁴¹

The private sector has much to offer railway reform efforts—capital is more abundant in the private sector and investors recognise that railways can often offer opportunities for good returns. Private enterprises are driven by commercially oriented managers focusing on factors that affect profit and loss—marketing, customer service, and controlling costs. These factors are not necessarily the focus of state managers.²⁴²

239 Economic and Social Commission for Asia and the Pacific. Restructuring of railways. 2003. pg 23

240 World Bank. Railway reform: toolkit for improving rail sector performance. 2nd Ed. 2017. pg. 208.

241 The World Bank. Railway reform toolkit for improving rail sector performance. 2nd Edition. 2017. pg. 200.

242 The World Bank. Railway reform toolkit for improving rail sector performance. 2nd Edition. 2017. pg. 200

Private sector participation is not a panacea for reforming government-run railways. Governments with an ineffective and costly rail sector have to decide whether to: a) fix the railway first (corporatize, downsize staff, and make key investments); or b) let the private sector carry out the fixes.

Findings of this study indicate that the private sector has the potential to support railway transport reform efforts because whereas government may not have intensive capital and human resource that may be required for the industry, private sector support can help towards achieving a robust growth in the industry.

Study findings further indicate that one of the greatest challenges in dealing with private sector participation is designing contract incentives that reward attainment of performance that the government wants to achieve, while ensuring that the condition of the physical assets improve. A respondent stated that “the advantage of private participation is the fact that it comes with capital and human resource. Governments cannot afford the huge financial resource required for railway transport development. This is the reason why all over the developed world, Public Private Partnerships (PPPs) are enabling governments around the globe to achieve huge infrastructural development such as roads and railways.”²⁴³

Regarding reforming the present railway management structure into a structure that would facilitate private sector participation, the draft national railway policy 2018 presents three options: option A: Integrated Concessionaire Financing the Maintenance of the Infrastructure; option B: which is vertical separation between infrastructure management and train operations; and finally, option C: which is the vertical separation and horizontal separation.

The recommendation in the policy is for Uganda to adopt option C in a phased manner until the traffic intensity allows for competition. According to the policy, option C provides probably the best regulatory framework to implement a fully competitive rail system. Setting up a formal legal and regulatory framework that would permit open access would send a message to the market that the sector is now competitive, as it will provide for the possibility of multiple operators and then let the market decide whether and or when this occurs.²⁴⁴ Under this option the government would retain ownership and management of the infrastructure with options for operators to access the railway network.

Recommendation

Uganda should adopt a railways industry structure which is both vertically and horizontally separated to enhance private sector participation in the industry.

4.1.5 Dispute resolution mechanisms for railways related matters

The URC Act does not provide a dispute resolution mechanism for railway matters. The study found that the use of alternative dispute resolution is an important element in addressing conflicts in comparison with the traditional method of litigation. Considering

243 Uganda Law Reform Commission consultative meeting with the Kenyan Law Reform Commission and the office of the Attorney General and Department of Justice on the review of the URC Act. 19th August 2019.

244 Draft National Railway Policy, 2018. pg. 39.

that railway disputes might have the effect of disrupting business, there is need to have a mechanism that quickly facilitates dispute resolution.

Alternative dispute resolution mechanisms offer alternatives to the traditional methods of litigation that are often bogged down with backlog, language shock for victims and attract costs in hiring lawyers. A respondent at a consultative workshop in Kampala noted that “the use of ADR in addressing railway transport complaints must be promoted and encouraged mainly because ADR does not present long judicial procedures and would be preferred as a simpler process arbitrated by an objective third party.”²⁴⁵ Another respondent stated that “complaints that are likely to be received will involve safety, or even contracts, in such circumstances it is through arbitration, mediation or reconciliation that a solution may be found.”

Similar to the railways sectors in some countries there is need to have a designated body to be charged with the responsibility of dispute resolution. The Commission supports the proposal in the draft national railway policy 2018, that the railway regulator should facilitate dispute resolution between operators, customers, investors and other stakeholders.²⁴⁶

Recommendations

- (i) ***The law should provide for the use of alternative dispute resolution mechanisms like arbitration, mediation, negotiation and conciliation in addressing complaints or disputes arising in the railway sector.***
- (ii) ***The rail regulator should serve as the dispute resolution mechanism of the railway sector.***

4.1.6 Accident and incident investigation

During consultations, respondents observed that in order to achieve effective and impartial investigation by any institution, there is need for such investigation body or authority to be independent from interference of any kind and their mandate must be clearly stated in the law to avoid duplication of roles with other organs like the police.

The Uganda Railways Bill, 2007 mandates the Minister to appoint a qualified person to exercise the powers of a regulator, in this case to investigate accidents and incidents.

The Commission observes that an accident committee that may be established by the railway regulator under clause 30 (4) of the Railways Bill, 2012, has representatives from several institutions. However, the clause is viewed as lacking in certain respects, for example, it does not mention the degree of independence required of the committee responsible for undertaking an investigation or the particular qualities, skills or training that the investigative team should possess. The Commission believes these provisions are inadequate to regulate the performance of investigations into railway accidents.

During consultations some respondents pointed out that there may not be need for a permanent railway accident investigative body. The Minister in charge of railways upon the occurrence of an accident or serious incident could appoint persons to conduct an

²⁴⁵ Uganda Law Reform Commission consultative workshop to review the Uganda Railways Corporation Act, Cap 331. Kampala on 14th August 2019.

²⁴⁶ Ministry of Works and Transport. National Railway Policy. 2018. pg. 40. (unpublished)

inquiry into the accident or incident. Their objection was mainly premised on the issue of increasing the administrative costs that would be incurred to operate a permanent accident investigative unit.

However, the Commission views the creation of a specialist accident investigative body as a critical element of railway safety regulation. These bodies have been created in most developed countries²⁴⁷ and they would increase the confidence of private train operators and the general public in the safety of the railway industry, more than *ad hoc* inquiries.

To safeguard the independence of the investigations the appointment of the accident and incident investigators should be one of the functions of the Minister responsible for railways. The investigators will include a chief investigator of rail accidents and investigators of rail accidents. The law should provide for the functions and powers of the investigators which may include:

- (a) investigating the causes of railway accidents and incidents;
- (b) identifying the factors that may lead to similar accidents or make the consequences worse;
- (c) highlighting gaps in the railway industry's safety measures revealed during investigations;
- (d) making recommendations to prevent accidents and incidents from happening again;
- (e) increasing awareness of how railway accidents happen; and
- (f) cooperating with other investigation organisations.

Recommendations

- (i) ***An accident and incident investigative unit for the railways industry should be established.***
- (ii) ***The railway accident and incident investigative body should be responsible for:***
 - (a) ***investigating the causes of railway accidents and incidents;***
 - (b) ***identifying the factors that may lead to similar accidents or make the consequences worse;***
 - (c) ***highlighting gaps in the railway industry's safety measures revealed during investigations;***
 - (d) ***making recommendations to prevent accidents and incidents from happening again;***
 - (e) ***increasing awareness of how railway accidents happen; and***
 - (f) ***cooperating with other investigation organisations.***
- (iii) ***Where a railway accident or serious incident is the subject of a police investigation at the same time as an investigation carried out by the rail accident investigatory body, both investigations should proceed in parallel.***

247 Australian Transport Safety Bureau of Australia; Public Body for Railway Safety of France;

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THE RAILWAYS BILL, 2020
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THE RAILWAYS BILL, 2020

A Bill for

AN ACT of Parliament to establish the Uganda Railway Authority as a railway infrastructure development and maintenance agency; to provide for the establishment of the Uganda Railway Company; to provide for the functions of the Office of Railway Regulation, as an independent railway economic and safety regulator; to provide for open access and licensing of train operators; to provide for the establishment of a Railway Accident and Incident Investigation Branch and for connected purposes.

1. Purpose of the Act

The purpose of this Act is—

- (a) to establish institutional structures that will ensure the adequate and safe provision of railway services;
- (b) to facilitate the development, maintenance and delivery of railway services;
- (c) to create a conducive environment for the efficient and effective management of the national railway network;
- (d) to ensure public safety and protection of public health and the environment in railway activities;
- (e) to create and promote an enabling environment for private sector involvement; and
- (f) to ensure transparency and accountability in the conduct of all activities regulate under this Act.

2. Interpretation

In this Act, unless the context otherwise requires—

- “Act” means the Uganda Railways Act;
- “Authority” means the Uganda Railways Authority established by section 3;
- “charges” means all sums received or receivable, charged or chargeable, for, or in respect of any services performed or facilities provided under this Act;
- “consignee” means a person to whom goods are accepted for carriage by the operator or rail carrier are addressed;
- “consignment” means one or more package of goods or a quantity of loose goods tendered for carriage by one consignor to one consignee by the rail carrier;
- “consignor” means a person who has tendered goods which have been accepted for carriage by the rail carrier;
- “Executive Director” means the Executive Director appointed under section 16;
- “fare” includes all sums received or receivable, charged or chargeable, for the carriage of a passenger by the rail carrier;
- “goods” includes luggage, animals (whether alive or dead) and all other movable property of any description;
- “infrastructure access charges” means the charges levied by the Authority on a train operator using the national railway network;
- “infrastructure capacity” means the potential to schedule requested train paths on all or sections of the national railway network for a certain period;

- “infrastructure manager” means a person who maintains and repairs a railway line, operates its control and safety systems, maintains its network and controls railway traffic on the network;
- “luggage” means such articles of personal apparel or for personal use, together with their containers, as are usually carried by passengers for their personal use or convenience, but does not include goods which, though carried in any such container or otherwise, are not intended for any such use;
- “licence” means a licence issued under this Act;
- “licensee” means a person to whom a licence is granted under this Act;
- “Minister” means the Minister responsible for railway transport;
- “network” means a system of railway infrastructure elements comprising track, civil infrastructure, train control systems and electric traction infrastructure which constitutes of running lines, railway yards, sidings and private sidings and any other matter that may be prescribed;
- “network statement” means a statement prepared and published by a network operator in accordance with section 85;
- “public or private networks” means the whole or any portion of a network not being part of the national railway network, owned and managed by a public or private entity and is operated for the carriage of passengers or freight for hire or reward;
- “operator” includes a train operator, station operator or any combination thereof;
- “passenger” means a person, other than an employee on duty of the rail carrier, lawfully travelling on any train of the rail carrier;
- “rail carrier” means a person who carries passengers or goods for hire or reward on a railway line;
- “railway” means a guided system designed for the movement of rolling stock that has the capability of transporting passengers, goods or both on a track that includes the land, network, rolling stock, plant machinery, goods and other immovable or movable property of every description or kind used or set aside for use in connection with or for the purpose of railway operation and for purposes of this Act it comprises of the national railway network and public or private networks;
- “railway line operator” means a person who holds a railway line operating licence under section 50;
- “railway reserve” means the land reserved for railways;
- “railway operating licence” means a licence granted by the Authority to an operator;
- “railway infrastructure” means facilities other than rolling stock necessary for a railway to operate efficiently and safely including railway track, associated track structures, over or under track structures, supports for railway equipment or for items associated with use of a railway, tunnels, bridges, stations, platforms, train control systems, signalling systems, communication systems, electric traction infrastructure, buildings, workshops and associated equipment;
- “railway station” means a place designated for trains to stop, pick or drop off passengers or goods and includes a road service station operated by the Authority to serve the railway;
- “regulations” means regulations made under this Act;
- “rolling stock” means a railway vehicle or other railway equipment that is able to operate on a railway, irrespective of its capability of independent motion, that is designed for movement on its wheels along a railway track and includes a locomotive, engine, track motor car, trolley, wagons, coaches, flanger or railway crane;

- “safety authorisation” means a safety authorisation issued by the Authority to a network operator in accordance with section 60;
- “safety certificate” means a safety certificate issued by the Authority to an operator in accordance with section 57;
- “safety management system” means a formal framework for integrating safety into day-to-day railway operations and includes safety goals and performance targets, risk assessments, responsibilities and authorities, rules and procedures, monitoring and evaluation processes and any other matter prescribed;
- “safety rules” means requirements relating to railway safety submitted by the operator for approval by the Authority in accordance with the safety standards prescribed pursuant to this Act;
- “serious railway accident” means any accident involving train collision or derailment of trains, which results in—
- (a) the death of at least one person;
 - (b) serious injuries to five or more persons;
 - (c) extensive damage to rolling stock, the infrastructure or the environment;
- “station operator” means a person in responsible for the management of a railway station;
- “Tariff Notice” means the Tariff Notice prepared and published in accordance with section 117;
- “ticket” means a ticket issued by the operator, whether in print or electronic form and includes a single ticket, a return ticket, a season ticket or any other written authority (not a free pass) for the carriage of a passenger;
- “train operator” means a person in control of the movement and management of rolling stock on a network and holds a railway operating licence under section 73;
- “train path” means the infrastructure capacity needed to run a train between two points over a given time-period;
- “track” means the guidance system (rails) on which the rolling stock runs and its immediate support which may include rail connectors, sleepers, ballast, points and crossing, and substitute devices where used;
- “train control systems” means signalling and telecommunications equipment provided and used as control equipment and has a central supervising system, and line-level systems managing the station-level sub-systems;
- “warehouse” means any building, place, wagon, or vehicle when used by the Authority for the purpose of warehousing or depositing goods;

PART II—UGANDA RAILWAY AUTHORITY

3. Establishment of the Authority

- (1) There is established the Uganda Railway Authority.
- (2) The Authority is a body corporate with perpetual succession and a common seal and may, for the discharge of its functions under this Act—
 - (a) acquire, hold and dispose of moveable and immovable property;
 - (b) sue and be sued in its corporate name; and
 - (c) do all acts and things as a body corporate may lawfully do.
- (3) The Authority shall be under the general supervision of the Minister.

4. Functions of Authority

- (1) The functions of the Authority are—
 - (a) to be responsible for the management of the national railway infrastructure assets;
 - (b) to maintain and develop the national railway infrastructure assets;
 - (c) to advise the Government on policy matters concerning railways generally, and to assist in the co-ordination and implementation of the policy relating to railways;
 - (d) to contribute to the addressing of transport concerns in overall national planning through co-ordination with the relevant ministries, departments and agencies of Government;
 - (e) to collaborate with international organisations, intergovernmental organisations and agencies of other states and the private sector on issues relating to the development and maintenance of railways;
 - (f) to enter into agreements or other arrangements with any person for the provision of railway services, subject to such charges as may be agreed upon;
 - (g) monitor the performance of obligations of railway operators pursuant to agreements made with them;
 - (h) undertake such research as it deems necessary to carry out its functions;
 - (i) to advise and assist the Minister, subject to such conditions as may be agreed upon, in regard to—
 - (i) any matter relating to the planning, design, construction and maintenance of railways, whether the roads are part of the national roads network or not;
 - (ii) the establishment and maintenance of railway reserves; and
 - (iii) the exercise of any power or performance of any duty which the Minister may or is required to exercise or perform under this Act;
 - (j) to perform any other function incidental or consequential to its functions under this Act or as may be conferred on it under this Act.

(2) The Authority shall, to the greatest extent possible, and consistent with this Act, consult and co-operate with departments, branches and agencies of the Government and with utility service providers having duties, aims or objectives related to those of the Authority.

5. Seal of the Authority

(1) The official seal of the Authority shall be in a form determined by the Board.

(2) The official seal shall, when affixed to any document, be authenticated by the signatures of the Chairperson and the Secretary of the Board.

(3) In the absence of the Chairperson, the person performing the functions of the Chairperson shall sign.

(4) An instrument or contract which if executed or entered into by a person other than a body corporate would not require to be under seal may be executed or entered into on behalf of the Board by the Chairperson, or by any member of the Board or any other

person if that member or other person has been duly authorised by resolution of the Board to execute or enter into the instrument or contract as the case may be.

(5) Every document purporting to be an instrument or contract executed or issued by or on behalf of the Board in accordance with this section shall be deemed to be so executed or issued until the contrary is proved.

6. Directions by the Minister

(1) The Minister may give directions in writing to the Authority with respect to the policy to be observed and implemented by the Authority.

(2) The Minister shall cause a copy of any directions given to the Authority under subsection (1) to be published in the Gazette.

7. Independence of the Authority

The Authority shall, subject to section 13(1), be independent in the performance of its functions, duties and the exercise of its powers.

Board Directors of the Authority

8. Board of Directors

(1) The Authority shall have a Board of Directors, which shall be the governing body of the Authority.

(2) The Board of Directors shall consist of seven members appointed by the Minister with the approval of Cabinet.

(3) The members appointed under subsection (2) shall include—

- (a) a chairperson;
- (b) a representative of the Ministry responsible for railways;
- (c) a representative of the Ministry responsible for finance;
- (d) a representative of the National Planning Authority;
- (e) a representative of engineers nominated by a professional body of engineers;
- (f) two representatives from the private sector; and (a) the Executive Director of the Authority, *ex officio*

(4) The Minister shall appoint one of the members of the Board, other than the Executive Director, to be the Chairperson of the Board.

(5) The chairperson and the persons referred to in subsection 3(f) shall be appointed by the Minister from among persons with knowledge and proven experience in any of the following fields;

- (a) transport;
- (b) railway industry;
- (c) law;
- (d) engineering;
- (e) business administration or management;

- (f) finance or economics, finance;
- (g) or any other relevant field.

(6) The Minister shall, in appointing the members of the Board, ensure that there is a balance of skills and gender.

9. Disqualification from appointment

A person shall not be appointed to the Board who—

- (a) has been convicted of an offence under this Act or of an offence involving dishonesty or fraud by a competent court in Uganda or elsewhere;
- (b) has been adjudged bankrupt under any law in force in Uganda and has not been dis-charged;
- (c) has been convicted of an offence and sentenced to a term of imprisonment for six months or more without the option of a fine by a competent court in Uganda or elsewhere; or
- (d) is a Member of Parliament, a Minister or a member of a local government council.

10. Tenure of office of members of the Board

(1) A member of the Board shall hold office for four years and is eligible for reappointment for one further term.

(2) The chairperson and members of the Board shall hold office on terms and conditions specified in their instruments of appointment.

(3) A member of the Board may, at any time, resign his or her office by letter addressed to the Minister, giving notice of not less than one month.

- (4) The Minister may, at any time suspend or remove a member of the Board only—
 - (a) for inability to perform the functions of his or her office arising from infirmity of body or mind;
 - (b) for misbehaviour or misconduct;
 - (c) for incompetence;
 - (d) for absence without prior permission of the chairperson, or without reasonable cause to the satisfaction of the Minister, for more than four consecutive meetings of the Board;
 - (e) for bankruptcy or insolvency;
 - (f) for conviction of a criminal offence, in Uganda or elsewhere, in respect of which the maximum penalty exceeds six months imprisonment without the option of a fine; or
 - (g) where information relating to the conduct of a member, which could have precluded his or her appointment if it had been made available to the Minister, is brought to the attention of the Minister.

(5) Where it appears to the Minister that there is cause to remove a member under subsection (4), the Minister shall notify the member concerned in writing and shall give the member an opportunity to submit his or her explanation to the Minister and to be heard in person or represented by his or her lawyer.

- (6) Where a member is removed from office under this section, the Minister shall—
 - (a) communicate to the relevant agency or body the member removed represented for a replacement;
 - (b) where the member was appointed under section 8(3), appoint another qualified person to replace the member, and;

in both circumstances, the member appointed shall hold office for the remainder of the term of the previous member.

11. Remuneration of Board members

The Chairperson and members of the Board shall be paid such remuneration as will be specified in their instruments of appointment.

12. Functions of the Board

(1) The Board is responsible for the general direction and supervision of the Authority.

- (2) Without limiting the general effect of subsection (1), the Board shall—
 - (a) oversee the operations of the Authority;
 - (b) advise the Minister on railways related policy and strategic issues;
 - (c) review and approve business and operating plans, budgets, reports and audited financial statements of the Authority;
 - (d) establish and approve rules and procedures for appointment, promotion, termination, discipline, and terms and conditions of service of the staff of the Authority;
 - (e) provide guidance to the Executive Director and staff of the Authority;
 - (f) review the management of the Authority; and
 - (g) perform any other function conferred by this Act or which may be necessary for the proper implementation of this Act.

13. Meetings of the Board

Schedule 2 has effect in relation to meetings of the Board and other matters provided for in that Schedule.

14. Committees of the Board

- (1) The Board may appoint committees of the Board—
 - (a) to inquire into and advise the Board on any matter concerning the functions of the Board as it may refer to the committee; and
 - (b) to exercise such powers or perform such functions of the Board as the Board may delegate or refer to the committee.

(2) A committee appointed under subsection (1) shall consist of a chairperson who shall be a member of the Board and other members of the committee as the Board may determine whether members of the Board or not.

(3) The Board shall, in writing, specify the terms and conditions of service of the members of a committee appointed under this section.

(4) Members of a committee appointed under this section shall be paid such allowances as the Board may determine.

(5) The Board may require a committee appointed under this section to act jointly or in co-operation with any other committee.

(6) Subject to any direction given by the Board, a committee appointed under this section may regulate its own procedure.

15. Delegation of functions of Board

(1) The Board may, by instrument of delegation, delegate to the Chairperson, a member of the Board, an officer of the Authority or to a committee established under section 24, any of the powers, duties or functions of the Board under this Act.

(2) The terms and conditions regulating the exercise of the powers delegated under this section shall be contained in the instrument of delegation.

(3) A person aggrieved by the decision of a person to whom functions and powers have been delegated under this section may appeal to the Board.

(4) A person shall, in the exercise of a delegated power under this section, comply with any directions or guidelines as the Board may, from time to time, communicate in writing.

Staff of the Authority

16. Executive Director

(1) The Authority shall have an Executive Director who shall be appointed by the Minister on the recommendation of the Board, on terms and conditions specified in his or her instrument of appointment.

(2) The Executive Director shall be the accounting and chief executive officer of the Authority and a full time employee of the Authority.

(3) The Executive Director shall be a person of high moral character and proven integrity, and who has the relevant professional qualifications and experience relating to the functions of the Authority.

(4) The Executive Director shall hold office for five years and is eligible for re-appointment for one more term.

(5) The Executive Director shall cease to hold office where —

- (a) he or she resigns;
- (b) he or she is declared bankrupt or insolvent or has made an arrangement with his or her creditors;
- (c) has been convicted of an offence and sentenced to imprisonment of six months or more by a competent court in Uganda or elsewhere;
- (d) he or she is removed from office by the Board for—

- (i) inability to perform the functions of his or her office arising from infirmity of body or mind;
- (ii) misbehaviour or misconduct; or
- (iii) incompetence.

17. Functions of Executive Director

(1) Subject to this Act and to the general supervision and control of the Board, the Executive Director shall—

- (a) initiate and implement the policies and programmes of the Authority and report on them to the Board and ensure that the agreed objectives, targets and service standards are met;
- (b) be responsible for the proper management of the property of the Authority;
- (c) manage the staff of the Authority;
- (d) develop and oversee an operating plan to guide the Authority in performing its functions;
- (e) co-operate with lead agencies and organisations in matters related to the railways sector;
- (f) develop an economic, efficient and cost effective internal management structure;
- (g) propose and implement the strategic plans, business plans and annual plans of the Authority;
- (h) provide advice as required on all matters which fall within the area of the Authority's responsibility; and
- (i) perform any other duty necessary for the implementation of this Act as may be assigned to him or her by the Board.

(2) The Executive Director is, in the performance of his or her functions, answerable to the Board.

18. Other officers and staff of the Authority

(1) The Board may appoint other officers and staff of the Authority as may be necessary for the proper and efficient performance of the functions of the Authority.

(2) The employees appointed under this section shall hold office on such terms and conditions as may be determined by the Board and specified in their instruments of appointment.

(3) The Board shall regulate the manner of appointment, terms and conditions of service and the discipline of the staff appointed under this section.

19. Protection from liability of members of the Board and officers of Authority

A member of the Board or an officer of the Authority or a person acting on the directions of the Board or of an officer of the Authority is not personally liable for any act or omission done or omitted to be done in good faith in the exercise of functions under this Act.

Finances of the Authority

20. Funds and sources of revenue of the Authority

- (1) The funds and sources of revenue of the Authority shall consist of—
 - (a) money appropriated by Parliament for the purposes of the Authority;
 - (b) grants, gifts or donations from the Government or other sources made with the approval of the Minister and the Minister responsible for finance;
 - (c) revenue earned from activities of the Authority under this Act;
 - (d) fees charged and civil fines and penalties recovered by the Authority; and
 - (e) any other funds received by the Authority in the performance of its functions under this Act.
- (2) All non-tax revenue raised by the Authority shall be remitted to the Consolidated Fund

21. Duty to operate on sound financial principles

The Authority shall, in the performance of its functions under this Act, have due regard to sound financial principles.

22. Power to open and operate bank accounts

- (1) The Authority shall, with the approval of the Board, open and maintain such bank accounts as are necessary for the performance of the functions of the Authority.
- (2) The Executive Director shall ensure that all money received by or on behalf of the Authority is banked as soon as practicable after being received.
- (3) The Executive Director shall ensure that no money is withdrawn from or paid out of any of the Authority's bank accounts without the authority of the Board.

23. Powers to borrow

The Authority may borrow money from any source as may be required for meeting its obligations or for the discharge of its functions under this Act in accordance with the Public Finance and Accountability Act, 2003.

24. Estimates

- (1) The Executive Director shall, within three months before the end of each financial year, cause to be prepared and submitted to the Board for its approval, estimates of the income and expenditure of the Authority.
- (2) The Board shall, within two months after receipt of the estimates referred to in subsection (1), cause to be submitted to the Minister for his or her approval, the estimates of income and expenditure as approved by the Board.

25. Financial year of Authority

The financial year of the Authority shall be the same as the financial year of the Government.

26. Accounts

(1) The Executive Director shall cause to be kept, proper books of accounts and records of the transactions of the Authority in accordance with accepted accounting principles.

(2) Subject to any direction given by the Board, the Executive Director shall cause to be prepared an annual financial statement stating the basis of accounting and shall identify any significant departure from it and the reasons for the departure.

(3) The statement of accounts shall include—

- (a) a balance sheet, an income and expenditure account and a source and application of Authority's statement; and
- (b) any other information in respect of the financial affairs of the Authority as the Auditor General or an auditor appointed by the Auditor General may, in writing require.

27. Audit

(1) The Auditor General or an auditor appointed by the Auditor General shall, in each financial year, audit the accounts of the Authority in accordance with the National Audit Act, 2008.

(2) The Board shall ensure that three months after the end of each financial year, a statement of accounts is submitted to the Auditor General or to an auditor appointed by the Auditor General for auditing.

28. Annual report

(1) The Board shall submit to the Minister, within three months after the end of each financial year, an annual report on the activities and operations of the Authority for that financial year.

(2) The report referred to in subsection (1) shall include—

- (a) particulars of activities, projects and programmes relating to—
 - (i) advice furnished or assistance rendered contemplated in section 4;
 - (ii) the management of the national railway network;
- (b) the extent to which any direction given by the Minister during that financial year has been carried out;
- (c) an assessment by the Authority of its achievements in relation to the performance agreement; and
- (d) such other information as the Board may consider necessary.

(3) The Authority shall submit to the Minister, together with the report referred to in subsection (1), the audited financial statements of the Authority, and the auditor's report on those statements.

(4) The Minister shall, within two months after the receipt of the annual report, submit the report to Parliament.

Uganda Railway Company

29. Establishment of the Uganda Railway Company

(1) There shall be incorporated, under the Companies Act, 2012 a Uganda Railway Company which shall be wholly owned by the State to manage Uganda's commercial aspects of railway activities and the participating interests of the State in the railway agreements.

(2) The Uganda Railway Company shall be subject to and managed in accordance with the Companies Act, 2012 and this Act.

(3) Where there is a conflict between this Act and the Companies Act, 2012 this Act shall prevail.

30. Functions of the Uganda Railway Company

The functions of the Uganda Railway Company are—

- (a) to handle the state's commercial interests in the railway sub-sector;
- (b) to manage state participation in railway activities;
- (c) to manage the marketing of the country's railway interests;
- (d) to manage the business aspects of state participation;
- (e) to develop in depth expertise in the railway industry;
- (f) to optimise value to its shareholders;
- (g) to participate in joint ventures in which it holds an interest on behalf of the State; and
- (h) to investigate and propose new railway business ventures both local and international.

31. Duties of the Board of Directors of the Uganda Railway Company

(1) The Board of Directors of the Uganda Railway Company shall be appointed by the Minister with the approval of Cabinet.

(2) The Board of Directors of the Uganda Railway Company shall submit the following matters to the annual general meeting—

- (a) plans for the coming year, as well as outlook for the intermediate term and significant changes in any of these;
- (b) plans regarding projects of major significance to the company's participation in railway activities according to this Act;
- (c) main features of the budget for the coming year; and
- (d) (d) annual report and annual accounts in respect of the company.

(3) The Board of Directors of the Uganda Railway Company shall in addition submit to the annual general meeting of the company all matters that must be assumed to comprise principal or political aspects of significance or that may entail significant socio-economic or social effects.

(4) The Board of Directors shall inform the Minister of matters which are to be submitted to the annual general meeting.

32. Annual report and annual accounts of the Uganda Railway Company

(1) The Board of Directors shall submit to the annual general meeting, audited accounts of revenues and expenditure of the Company.

(2) The Board of Directors shall also submit to the annual general meeting an annual report containing an overview of the interests managed by the Company.

33. Instructions to the Uganda Railway Company

The Minister may issue instructions in writing to the Company in respect to its functions under this Act.

Office of Railway Regulation

34. Establishment of the Office of Railway Regulation

(1) There is established the Office of Rail Regulation.

(2) The office shall be a body corporate with perpetual succession and an official seal and may, for the discharge of its functions under this Act—

- (a) acquire, hold and dispose of moveable and immovable property;
- (b) sue or be sued in its corporate name; and
- (c) do all acts and things that a body corporate may lawfully do.

35. Functions of the office of Railway Regulation

(1) The functions of the Office of Railway Regulation are—

- (a) to licence operators of trains, train stations or networks.
- (b) to keep under review the provision of railway services
- (c) to protect the interests of users of railway services;
- (d) to regulate railway safety and environmental compliance;
- (e) to promote competition in the provision of railway services;
- (f) to approve access contracts;
- (g) to review access charges;
- (h) to promote the use of the railway for the carriage of passengers and goods;
- (i) to collect information with respect to the provision of railway services;
- (j) to undertake research;
- (k) to register licences, access agreements, orders and notices;
- (l) to make orders that enforce compliance with conditions or requirements;
- (m) to promote efficiency and economy on the part of persons providing railway services;
- (n) to investigate any alleged or apprehended contravention of a condition of a closure consent.
- (o) to act as the dispute resolution mechanism for railway matters;
- (p) to investigate and hear complaints from users and railway operators;
- (q) to monitor and ensure compliance with the provisions of this Bill;

- (r) publish information and advice to users or potential users of railway services;
- (s) to give information, advice and assistance to the Minister with respect to any matter in respect of which any function of the Office of Railway Regulation; and
- (t) to carry out any other duty as may be referred to it by the Minister from time to time

(2) The Minister may, by statutory instrument, in order to promote the effective functioning of the Office of Railway Regulation and compliance with the provisions of this Bill, prescribe additional functions or powers to be under-taken by or vested in the Office of Railway Regulation.

36. Powers of the Office of Railway Regulation

In carrying out the performance of its functions, under this Act, the Office of Railway Regulation may, in levy charges for

- (a) the issuing of licenses and permits;
- (b) the conducting of technical and environmental safety audits; and
- (c) information supplied

37. Annual report

(1) The Office of Railway Regulation shall, not later than six months after the close of the financial year, prepare an annual report for submission to the Minister.

- (2) The annual report shall contain—
 - (a) a report on railway technical and environmental safety, detailing each reported incident of loss of life or significant loss of property, the causes of the loss and the preventative measures which have been introduced;
 - (b) a report on any abuse of market power or discriminatory practices reported to and investigated by the Office of Railway Regulation, the findings and directives emanating from the investigation;
 - (c) an overview of the operations of the Office of Railway Regulation and an assessment on whether performance targets set in the business plan have been achieved; and
 - (d) The audited financial statements of the Office of Railway Regulation; and

(3) The Minister shall table the annual report in Parliament within two months after receiving it from the Office of Railway Regulation.

38. Compliance with safety and environmental standards etc

(1) The functions of the Office of Railway Regulation in respect of compliance with safety and environmental standards, rules and practices are to:

- (a) initiate proceedings to develop or revise a safety and environmental standard, rule or practice, or establish such a standard, rule or practice;
- (b) grant, issue, review or revoke a safety license or amend the conditions under which a license has been issued;
- (c) grant, issue review or revoke a railway construction permit or amend the conditions under -which a permit has been issued;
- (d) conduct safety and environmental compliance audits;
- (e) facilitate safety conferences or workshops;

- (f) conduct accident investigations: and
- (g) carry out any other- functions formally assigned by the Minister, from time to time.

39. Commercial operations

The functions of the Railway Regulator in respect of compliance with the provisions of this Act relating to commercial operations are to:

- I. investigate and hear complaints from users and railway operators in relation to access to services and discriminatory practices; and
- II. monitor measures in relation to abuse of monopoly power.

40. Co-operative governance and facilitation

(1) The Office of Railway Regulation shall co-operate with all organs of state on matters conferred to it by this Act or other legislation and, in particular enter into co-operative agreements with Ministries and regulators responsible for the regulation of transport services, traffic safety, environmental management, occupational health and safety and competition in order to ensure consistency in the implementation of policy and legislation and to minimize the duplication of functions and procedures.

(2) The Office of Railway Regulation shall, in relation to its safety and environmental functions, duties and powers, submit to the National Environment Management Authority reports as required by section 7 of the National Environment Act.

(3) The Minister shall publish a notice in the Gazette setting out co-operative agreements concluded under subsection (1).

(4) The Office of Railway Regulation shall encourage co-operation between railway operators at national and international levels to develop complementarities and interconnectivity.

(5) The Office of Railway Regulation shall liaise and co-operate with railway regulators of other countries and international organizations to ensure enhancement of knowledge and capacity in order to promote interoperability, safety and inter-modalism.

41. Regulatory principles

- (1) The Office of Railway Regulation shall, in undertaking any action under this Act-
 - (a) Promote reasonable and expeditious administrative procedures which are lawful and comply with the rules of natural justice; and
 - (b) Minimize its interventions and the burden imposed on licensees and permit holders to collect, maintain all process information to such interventions and information which is reasonably necessary to enable the Railway Regulator to properly perform its functions.

(2) Any directive or decision by the Office of Railway Regulation shall be in writing: and shall be accompanied by reasons for the decision or directive.

(3) Any person may request to be provided with a copy of a directive or decision of the Railway Regulator, at no cost.

42. Access to provision and confidentiality of information

The Railway Regulator shall follow the purpose of any investigation, compliance, audit or hearing—

- (a) have access to any information including information on any rate and rate agreement; and
- (b) request any rail transport operator or rail infrastructure operator to provide any information, including information on any rate and rate agreement.
- (c) not disclose, transmit or make known to any person any information relating to the contents of a rate agreement or shipping contract, unless such information is required;
- (d) Any person may, subject to **subsection (3)**, request the Office of Railway Regulation for any information received by it and the Office of Railway Regulation shall comply with the request.

43. Compliance directives

(1) A compliance directive issued by the Office of Railway Regulation shall require the person or entity, which it is directed—

- (a) to cease to perform an action which is not in compliance with the provisions of this Act or a license, permit, concession or performance agreement issued or concluded under this Act; and
- (b) to perform an action in order to comply with this Act or a license, permit, concession or performance agreement issued or concluded under this Act.

(2) A compliance directive shall be enforced in the same manner as an order of the High Court.

(3) Subject to section 42, in the event of non-compliance with a compliance directive, the Office of Railway Regulation shall revoke all permits and licenses issued to the person to which the compliance directive is addressed.

(4) A person or entity that does not comply with a directive issued by the Minister commits an offence and is liable, on conviction, to a fine not exceeding twenty four currency points or to imprisonment for a term not exceeding two years or both.

44. Appeals

A person aggrieved by a directive or decision of the Office of Railway Regulation may appeal to the High Court within thirty days from the date of the decision appealed against.

PART IV– REQUIREMENTS FOR CONSTRUCTING A RAILWAY LINE

45. Approval required to construct a railway line

- (1) A person shall not construct a railway line without the approval of the Authority.

(2) In granting the approval under this section, the Authority shall consider the following—

- (a) a book of reference to the plan indicating the identity of the owners of the lands described in the plan; and
- (b) proof that it has complied with all applicable requirements of the National Environmental Management Act needed as a proponent of the proposed railway line.

(3) The Authority may grant the approval if it considers that the location of the railway line is reasonable, taking into consideration requirements for railway operations and services and the interests of the localities that will be affected by the railway line.

(4) An approval granted under this section may contain any condition that the Authority considers appropriate including the period of time during which the approval remains in force, the minimum insurance coverage required of the person asking for the approval during the construction period, establishment by that person of effective procedures to deal with complaints of localities and persons affected by the construction of the proposed railway line, and acts or omissions that would cause the approval to be suspended or revoked.

(5) (a) The Minister shall by regulations prescribe standards for testing, design, construction and maintenance of railways by the authority.

- (b) The Minister shall publish in the Gazette the railway standards formulated under this section.
- (c) Each contractor or party shall comply with the railways standards prescribed by the Minister under this Act.

(6) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable, on conviction to a fine not exceeding 20 million shillings or to imprisonment for a term not exceeding five years or to both.

46. Accommodation works

(1) A person who constructs a railway line shall during the construction of the railway line or as soon as practicable thereafter, construct and maintain the following accommodation works for the benefit of the owners and occupiers of lands adjoining those on which the railway line is constructed—

- (a) such crossings, bridges or other works as, in the opinion of the Authority, are necessary for the purpose of making good any interruption caused by the construction of the railway line to the use of the lands through which the railway line is constructed;
- (b) such culverts, drains or other works as, in the opinion of the Authority, are necessary to convey water as freely as is practicable from or to such adjoining lands as before the construction of the railway line:

(2) Notwithstanding the provisions of sub-section (1)—

- (a) nothing in this section shall require the construction or the maintenance of any accommodation works in such a manner as to prevent or obstruct the proper operation of the railway line;

- (b) where suitable accommodation works for the crossing of roads or watercourses have been constructed under this section and such road or watercourse is afterwards diverted by some person other than the person constructing the railway line, then, the person constructing the railway line shall not be required to construct other accommodation works for the crossing of the road or watercourse.

47. Additional accommodation works

If at any time—

- (a) the owner or occupier of any lands on which a railway line is constructed desires any accommodation works in addition to those, if any, constructed by the person constructing the railway line under section 48; or
- (b) any public body proposes to construct a public road or any other works across a railway line, then the owner, occupier or public body, as the case may be, may require the person constructing the railway line to construct such accommodation works—
 - (i) as may be agreed between the person constructing the railway line and the owner, occupier or public body; or
 - (ii) if no such agreement is reached, as may be determined by the Authority, and the cost of constructing such accommodation works shall be borne by the owner, occupier or public body requiring them.

48. Construction of railway across a public road

(1) Where, pursuant to the approval granted under section 47, the person constructing a railway line proposes to construct a railway line across a public road, the Authority may, subject to subsection (3), require the person constructing the railway line to construct the railway line in such a manner that it does not cross such road on the level and to execute such other works as may be necessary for the safety of the public and the person constructing the railway line shall comply with such requirements.

(2) Where any railway line has been constructed so as to cross a public road on the level, the Authority may, subject to subsection (3), require the person constructing the railway line—

- (a) to erect such gates; or
- (b) to raise or lower the level of the public road so that it crosses the railway line above or below and not on the level, and to execute such other works as may be necessary for the safety of the public, and the person constructing the railway line shall comply with such requirements.

(3) The Authority shall, before making any requirement under this section, communicate with the person constructing the railway line and the public body responsible for the maintenance of such public roads and shall take into consideration any representations made by the person constructing the railway line or that public body.

(4) Where, as a result of a determination made by the Authority under this section, any works are to be constructed by the person constructing the railway line, then the manner of the construction of such works and the apportionment of the cost of construction and

maintenance thereof shall be determined by agreement between the person constructing the railway line and the public body responsible for the maintenance of the public road. If no such agreement is reached it shall be determined by the Authority.

49. Certification of a new railway line

(1) Before any section of a new railway line is declared open for the public carriage of passengers or goods, the Authority shall furnish to the person having constructed the new railway line with a certificate attesting that such section complies with the standards laid down by the Authority and may, in the opinion of such engineer or other person, be opened for the public carriage of passengers or goods without danger to the public; and

(2) Upon the certificate referred to in subsection (1) being furnished, the Authority may by notice in the Gazette declare the section to which the certificate refers to be open for the public carriage of passengers or goods.

(3) For the purpose of this section, the expression “new railway line” does not include any diversion or re-alignment of track made to any existing railway line.

50. Operation of a railway line

(1) A person who has constructed a railway line under this Act or who, on the day of coming into force of this Act, was the owner or lessee of an existing railway line, shall not operate the railway line without first having obtained from the Authority a railway line operating licence.

Provided that the owner or lessee of an existing railway line shall apply for a licence to operate the railway line within 6 months of commencement of this Act;

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable, on conviction to a fine not exceeding one hundred and seventy million shillings or to imprisonment for a term not exceeding five years or to both.

51. Classes of licences

(1) The Authority may issue the following classes of railway line operating licenses for the operation of a railway line—

- (a) a main line passenger service licence issued for the carriage of passengers on long-haul or intercity journeys;
- (b) a commuter line service licence issued for the carriage of passengers in urban or sub-urban areas;
- (c) a freight service licence issued for the carriage of goods;
- (d) a track maintenance service licence issued to the infrastructure manager or one or more of its subcontractors for the purpose of maintaining the railway line and for assisting the holders of a licence issued under paragraphs (a), (b) or (c) in cases of emergency; or;
- (e) a licence combining any or all of the above classes of licenses issued under paragraphs (a), (b), (c) or (d).

52. Railway operating licence

Sections 73 to 80 of this Act shall apply with the necessary modifications to applications made under this chapter for a railway line operating license.

PART V – RAILWAY SAFETY

53. Operation of rolling stock on the national Railway network

(1) A train operator shall not operate rolling stock on the national railway network unless the train operator—

- (a) has established and maintains a safety management system which meets the requirements set out in section 55(1); and
- (b) holds a current safety certificate in relation to the operation in question.

(2) The Authority shall not permit the national railway network to be used to operate rolling stock unless—

- (a) the Authority has established and maintains a safety management system which meets the requirements referred to in section 55(2);
- (b) the Authority holds a current safety authorization in relation to the national railway network; and
- (c) the train operator who intends to use the national railway network has complied with subsection (1).

54. Operation of rolling stock on a railway line

(1) A railway line operator shall not operate rolling stock on a railway line unless the railway line operator—

- (a) has established and maintains a safety management system which meets the requirements set out in section 56; and
- (b) holds a current safety certificate in relation to the operation in question.

(2) An infrastructure manager shall not permit the railway line under its management to be used for the operation of rolling stock unless—

- (a) the infrastructure manager has established and maintains a safety management system which meets the requirements set out in section 56;
- (b) the infrastructure manager holds a current safety authorization in relation to the railway line in question; and
- (c) the railway line operator who intends to use the railway line has complied with subsection (1).

55. Safety management system for the national railway network

(1) The requirements for a safety management system referred to in section 53 are that—

- (a) it is established to ensure that the national railway network—
 - (i) can achieve the prescribed common safety targets; and
 - (ii) is in conformity with relevant safety rules;
- (b) it applies the relevant parts of the prescribed common safety methods;

- (c) it meets the requirements and contains the elements set out in the Fourth Schedule, adapted to the character, extent and other characteristics of the operation in question;
 - (d) it ensures the control of all categories of risk including new or existing risks associated with the operation in question which, without prejudice to the generality of the foregoing, shall include such risks relating to the—
 - (i) supply of maintenance and material; and
 - (ii) use of contractors; and
 - (e) it takes into account, where appropriate and reasonable, the risks arising as a result of activities carried on by other persons; and
 - (f) all parts of it are documented.
- (2) The requirements for a safety management system referred to in section 54 are the requirements in subsection (1) and that—
- (a) it takes into account the effects of operations of train operators; and
 - (b) it contains provisions to ensure that the way in which the Authority carries out its operation makes it possible for any train operator to operate in accordance with—
 - (i) the relevant safety rules; and
 - (ii) the means adopted by the train operator to meet the requirements referred to in section 5(4), of which the Authority accepted that there was sufficient evidence upon issue or amendment of its safety certificate pursuant to this chapter; and
 - (c) it aims to co-ordinate the emergency procedures of the Authority with those of the train operators.

56. Safety management system for railways

The requirements for a safety management system referred to in section 72 are as follows—

- (a) it is adequate to ensure that the relevant statutory provisions which make provision in relation to safety will be complied with in relation to the operation in question;
- (b) it meets the requirements and contains the elements set out in the Fourth Schedule, adapted to the character, extent and other characteristics of the operation in question;
- (c) it ensures the control of all categories of risk associated with the operation in question which, without prejudice to the generality of the foregoing, shall include such risks relating to the—
 - (i) supply of maintenance and material;
 - (ii) use of contractors; and
 - (iii) placing in service of new or altered rolling stock the design or construction of which incorporates significant changes compared to any rolling stock already in use on the railway line and which changes would be capable of significantly increasing an existing risk or creating a significant safety risk;
- (d) it takes into account, where appropriate and reasonable, the risks arising as a result of activities carried on by other persons; and
- (e) all parts of it are documented.

57. Safety certificate

- (1) An application for a first safety certificate in respect of an operation shall—
 - (a) be made to the Authority by a train operator or a railway line operator;
 - (b) include the information set out in—
 - (i) Part 1 of the Fifth Schedule in respect of a national railway network application; and
 - (ii) Part 2 of the Fifth Schedule in respect of a railway line.
- (2) Within 120 days of the date of receipt of the application, the Authority shall—
 - (a) issue a safety certificate for the operation in question; or
 - (b) notify the applicant that it has refused the application, and in either case shall give reasons for its decision.
- (3) A safety certificate shall—
 - (a) specify the type and extent of the operation in respect of which it is issued; and
 - (b) certify acceptance by the Authority that the applicant has provided sufficient evidence—
 - (i) to demonstrate that the safety management system of the applicant meets the requirements set out in section 55 (1) in respect of a national railway network application or section 56 in respect of a railway line application; and
 - (ii) of the provisions adopted by the applicant to meet the safety rules that are necessary to ensure safe operation on the national railway network or the railway line, as the case may be, and reference the information on which such acceptance is based; and
 - (c) be valid for no longer than five years from the date of issue and the period of validity shall be indicated in the safety certificate.

58. Amended safety certificate

- (1) Where it is proposed that the type or extent of an operation in respect of which a safety certificate has been issued is to be substantially changed then the holder of the safety certificate shall apply to the Authority for the safety certificate to be amended accordingly and the substantial change shall not be made until the safety certificate is so amended.
- (2) An application for an amended safety certificate under this section shall—
 - (a) provide details of the change proposed; and
 - (b) provide details of any consequential changes to any information sent to the Authority in respect of the operation in question which remains relevant to that operation.
- (3) Within 120 days of the date of receipt of the application the Authority shall—
 - (a) issue a notice making any necessary amendments to the matters set out in the safety certificate; or
 - (b) notify the applicant that it has refused the application, and in either case shall give reasons for its decision.

59. Renewal of safety certificate

(1) At least ninety days before the expiry of a safety certificate the holder of that safety certificate may apply to the Authority for a renewed safety certificate to be issued for the operation in question.

(2) An application for a renewed safety certificate shall set out particulars of any changes to any information sent to the Authority in respect of the operation in question which remains relevant to that operation.

(3) Section 57 (2) and (3) shall apply to an application for and the issuing of a renewed safety certificate as they apply to an application for and the issuing of a first safety certificate under section 57.

60. Safety authorization

(1) An application for a first safety authorization in respect of the national railway network or a railway line shall—

- (a) be made to the Authority by an infrastructure manager;
- (b) set out particulars of—
 - (i) the infrastructure in question;
 - (ii) how the safety management system of the applicant meets the requirements in section 55(2) in relation to a national railway network application or in section 56 in relation to a railway line application; and
 - (iii) how the provisions adopted by the applicant meet any requirements which are necessary for the safe design, maintenance and operation of the infrastructure in question.

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

- (a) issue a safety authorization in relation to the infrastructure in question; or
- (b) notify the applicant that it has refused the application; and
- (c) in either case shall give reasons for its decision.

(3) A safety authorization shall—

- (a) specify the infrastructure in respect of which the authorization is issued;
- (b) accept that the applicant has provided sufficient evidence to demonstrate that the safety management system of the applicant meets the requirements—
 - (i) referred to in section 55(2) in relation to a national railway network application; or
 - (ii) in section 56 in relation to a railway line application;
- (c) accept that the applicant has provided sufficient evidence of the provisions adopted by the applicant to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question;
- (d) reference the information on which the acceptance referred to in paragraphs (b) and (c) is based; and
- (e) be valid for no longer than five years from the date of issue and the period of validity shall be indicated in the safety authorisation.

61. Amended safety authorisation

- (1) Where it is proposed that a substantial change is to be made to—
 - (a) the infrastructure in respect of which a safety authorisation has been issued; or
 - (b) the principles of operation and maintenance of such infrastructure, then the holder of the safety authorisation shall apply to the Authority for the safety authorisation to be amended accordingly and the substantial change shall not be made until the safety authorisation is so amended.
- (2) An application for an amended safety authorisation under this section shall provide details of—
 - (a) the substantial changes proposed; and
 - (b) any consequential changes to any information sent to the Authority in respect of the operation in question which remains relevant to that operation.
- (3) Within 120 days of the date of receipt of the application the Authority shall—
 - (a) issue a notice making any necessary amendments to the matters set out in the safety authorisation; or
 - (b) notify the applicant that it has refused the application, and in either case shall give reasons for its decision.

62. Renewal of safety authorization

- (1) At least ninety days before the expiry of a safety authorisation the holder of that safety authorisation may apply to the Authority for a renewed safety authorisation to be issued for the infrastructure in question.
- (2) An application for a renewed safety authorisation shall set out particulars of any changes to any information sent to the Authority in respect of the operation in question which remains relevant to that operation.
- (3) Section 56(2) and (3) shall apply to an application for and the issuing of a renewed safety authorisation as they apply to an application for and the issuing of a first safety authorisation under section 60.

63. Notice of changes by holder of a safety certificate or a safety authorization

The holder of a safety certificate or a safety authorisation shall, without delay, notify the Authority—

- (a) of any major changes—
 - (i) to the means by which it meets the requirements relating to the safety management system as set out in section 55(1) in relation to an operation of a train operator on the national railway network or section 56 in relation to an operation of a railway line operator on the railway line;
 - (ii) in the case of a train operator or railway line operator, to the provisions adopted by it to meet any requirements necessary to ensure safe operation on the transport system in relation to the operation in question; or
 - (iii) in the case of the Authority or the infrastructure manager of a railway line, to the provisions adopted by it to meet any requirements that are necessary

for the safe design, maintenance and operation of the infrastructure in question;

- (b) when persons first commence work directly relating to the operation which is of a type which has not previously been carried out in relation to that operation; or
- (c) when types of rolling stock which are new to the operation in question are first introduced.

64. Revocation of safety certificate

- (1) The Authority shall revoke a safety certificate if it is satisfied that the holder—
 - (a) is no longer satisfying the conditions of that safety certificate and that there is a significant risk arising as a result; or
 - (b) is not operating rolling stock on the national railway network or the railway line, as the case may be, as intended pursuant to that safety certificate and has not done so throughout the period of one year commencing with the date of issue of the safety certificate by the Authority.

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

- (a) any part of the requirements relating to the safety management system set out in—
 - (i) section 55 (1) in relation to an operation carried out on the national railway network;
 - (ii) section 56 in relation to an operation carried out on a railway line; or
 - (iii) that the provisions adopted by the applicant are sufficient to meet any requirements that are necessary to ensure safe operation on the transport system in question in relation to the operation in question;

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

notify the holder that—

- (i) it is considering revoking that safety certificate and the reasons why;
- (ii) within a period specified in the notice, which shall be not less than 28 days, the holder may make representations in writing to the Authority or, if the holder so requests, may make oral representations to the Authority; and
- (iii) consider any representations which are duly made and not withdrawn.

(4) Where the Authority revokes a safety certificate, it shall send to the holder with the notice of revocation a statement of the reasons for revocation.

65. Revocation of safety authorisation

(1) The Authority shall revoke a safety authorization if it is satisfied that the holder is no longer satisfying the conditions of that safety authorization and there is a significant risk arising as a result.

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

- (a) any part of the requirements relating to the safety management system—
 - (i) referred to in section 55(2) in relation to an operation carried out on the National Railway network; or
 - (ii) in section 56 in relation to an operation carried out on a railway line; or

- (iii) that the provisions adopted by the applicant are sufficient to meet any requirements that are necessary for the safe design, maintenance and operation of the infrastructure in question.
- (3) Before revoking any safety authorisation, the Authority shall—
 - (a) notify the holder that—
 - (i) it is considering revoking that safety authorisation and the reasons thereof;
 - (ii) within a period specified in the notice, which shall be not less than twenty-eight days, the holder may make representations in writing to the Authority or, if the holder so requests, may make oral representations to the Authority; and
 - (b) consider any representations which are duly made and not withdrawn.
- (4) Where the Authority revokes a safety authorization, it shall send to the holder with the notice of revocation a statement of the reasons why.

66. General provisions relating to safety certificates and safety authorisations

- (1) Where an application is made under this section for a safety certificate or for an amended safety certificate which relates to an operation on the national railway network and on a railway line then—
 - (a) one application may be made for that operation but it shall be split into separate parts for the National Railway network and the railway line; and
 - (b) this section shall apply to those parts as if they were a national railway network application and a railway line application, except that where the same information is required it need not be stated twice.
- (2) A person may make one application for an operation in relation to which it requires both a safety certificate and a safety authorisation or an amended safety certificate and an amended safety authorisation.
- (3) An application under sub section (2) shall be split into separate parts relating to the safety authorisation and the safety certificate.
- (4) This chapter shall apply to those parts as if they were an application for a safety authorisation and a safety certificate or an amended safety authorisation and an amended safety certificate, except that where the same information is required it need not be stated twice.
- (5) Where an applicant—
 - (a) sends an application for a safety certificate or safety authorization, an amended safety certificate or safety authorization or further information to the Authority pursuant to subsection (5); or
 - (b) the holder of a safety certificate or a safety authorization sends a notice pursuant to section 63, then he shall at the same time either copy it to any affected party or notify any affected party without delay that the application or further information has been sent and of the address of the website where those documents may be accessed and how they may be accessed and, in either case, shall notify such a party, where the document in question is an application, of the time for making representations to the Authority pursuant to subsection (6).

- (6) Where the Authority issues a—
 - (a) safety certificate or safety authorization;
 - (b) notice amending a safety certificate or safety authorization;
 - (c) notice refusing an application for a safety certificate or a safety authorization or an amended safety certificate or safety authorization;
 - (d) notice that it is considering revoking a safety certificate or a safety authorization; or
 - (e) notice revoking a safety certificate or a safety authorization,

then the Authority shall at the same time either copy it and the reasons given for the Authority's decision to any affected party or notify any affected party that the relevant document has been issued and of the address of the website where those documents and the reasons given for the decision may be accessed and how they may be accessed and, in either case, shall notify such a party, where the document in question is a notice that it is considering revocation as mentioned paragraph (d), of the time for making representations to the Authority pursuant to subsection (6).

- (7) The Authority may upon receipt of—
 - (a) an application for a safety certificate or safety authorization;
 - (b) an application for an amended safety certificate or safety authorization;
 - (c) any further information requested under this subsection,

request as soon as reasonably possible such further information as it may reasonably require and the applicant shall provide such information as soon as reasonably possible.

- (8) Where an affected party receives a copy of an application or a notice relating to revocation pursuant to subsection (3)(a) or (4)(d) then—
 - (a) he may make any representations in writing to the Authority, which are relevant to the application or notice, within 28 days of the date of issue of the application or notice in question; and
 - (b) the Authority shall consider any such representations in making its decision.

(9) If a request for information is made under subsection (5), the period of one hundred and twenty days for the Authority to make a decision referred to in sections 57(2), (3) and 58(2) (3) shall not start to run until the date of receipt of the last information requested.

(10) In this section, "affected party" shall mean any of the persons prescribed by the Authority.

67. Power to stop and inspect vehicles

(1) A police officer in uniform may stop and inspect any vehicle with a view to ascertaining whether or not the provisions of this Act or of any regulations made thereunder have been complied with, and may demand for inspection the production of any licence, certificate, document or record of any description whatsoever which may, under the provisions of this Act or of any regulations made thereunder be required to be carried on such vehicle and may require the driver or any other person travelling on such vehicle to give such information as such police officer may reasonably request in order to ascertain whether or not the provisions of this Act or regulations are being complied with.

(2) A person who obstructs any police officer in the exercise of the powers conferred on such police officer by this section, or fails to comply with any lawful order given by such police officer or refuses to give any information when requested so to do by such police officer, commits an offence and shall be liable on conviction, to a fine not exceeding two hundred thousand shillings, and in the case of a second or subsequent offence to a fine not exceeding seven hundred thousand shillings or to imprisonment for a term not exceeding one year.

68. Safety reports and additional certifications

(1) A train operator who carries out operations on the national railway network shall send to the Authority an annual safety report in respect of its operations on the national railway network relating to the previous calendar year, which shall contain—

- (a) information on how the transport operator's safety targets, referred to in paragraph 2(b) of the Fourth Schedule, are met;
- (b) the results achieved through putting the transport operator's safety plans, referred to in paragraph 2(b) of the Fourth Schedule, into effect;
- (c) the findings of safety auditing carried out pursuant to the procedures referred to in paragraph 2(k) of the Fourth Schedule; and
- (d) comments on any deficiencies or malfunctions relating to the operation of rolling stock or the management of infrastructure relating to the operation in question that may be relevant to the safety of that transport system, and where an operation is carried out in part on the National Railway network and in part on a railway line the report shall include only information in respect of the part carried out on the National Railway network.

(2) The first annual report required under subsection (1) shall be sent by 30th June following the first calendar year of the coming into force of this Act and subsequent reports by 30th June in each subsequent calendar year.

69. Additional certifications by the Authority

Without prejudice to section 101, the Minister, in consultation with the Authority, may make regulations prescribing the procedure by which the Authority shall certify—

- (a) infrastructure and rolling stock;
- (b) personnel Corporation undertaking safety functions for railways; and
- (c) railway training centres, and the safety standards and requirements that must be met by the relevant applicant.

70. Establishment of a Railways Police Unit

(1) There shall be established a Railways Police Unit.

(2) All officers under this section shall have specialized training on railway operations security.

71. General powers of search and inspection

A railways inspector may without prejudice to all other written laws, at all reasonable times and without a warrant—

- (a) enter, inspect and examine any infrastructure and other property on which railway operations are being conducted;
- (b) enter, inspect and examine any rolling stock used for railway operations;
- (c) require the production of, inspect, examine, and take copies of licenses, permits, registers, records of any kind and other documents relating to this chapter and the carrying out of railway operations;
- (d) upon giving the Corporation, an infrastructure manager, a train operator or a railway line operator 90 days' written notice, install any equipment on any infrastructure and other property on which railway operations are being conducted or on any rolling stock used for railway operations for the purposes of monitoring compliance with the provisions of this Act, or regulations made thereunder; and
- (e) order the temporary cessation of railway operations where the officer considers that the railway operations are so hazardous as to constitute a serious and imminent danger to life.

72. Offences under section 71

- (1) A person who—
 - (a) hinders or obstructs a railway inspector in the exercise of their general powers of search and inspection under section 71;
 - (b) fails to comply with a lawful order or requirement made by the railway inspector in accordance with section 71(e), commits an offence.

(2) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding three years or a fine of not less than thirty five million shillings or both.

PART VI —LICENSING OF TRAIN OPERATORS

73. Railway operating licence

(1) A person shall not operate rolling stock on a railway without a railway operating licence granted by the Authority in accordance with this Act.

(2) A holder of a railway operating license who intends to access the national railway network, shall apply to the Authority for train path as provided under sections 89.

(3) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable, on conviction to a fine not exceeding one hundred million shillings or to imprisonment for a term not exceeding five years or to both.

74. Classes of licences

The Authority may issue the following classes of railway operating licences to a person wishing to operate rolling stock on a railway network—

- (a) a main line passenger service licence issued for the carriage of passengers on long-haul or inter county journeys;
- (b) a commuter line service licence issued for the carriage of passengers in urban or sub-urban areas;

- (c) a freight service licence issued for the carriage of goods;
- (d) a track maintenance service licence issued to the owners of railway network for the purpose of maintaining the railway network and for assisting the holders of a licence issued under paragraphs (a), (b) or (c) in cases of emergency; or
- (e) a licence combining any or all of the above classes of licences issued under paragraphs (a), (b) or (c).

75. Application for a licence

(1) An application to the Authority for a railway operating license, shall be in the prescribed form and shall be issued subject to terms and conditions prescribed by regulations made under this Act.

- (2) An application for a licence under subsection (1), shall—
 - (a) specify the scope of services to be rendered under the licence applied for;
 - (b) be accompanied by a comprehensive environmental impact assessment study and an Environmental Management Plan in accordance with the National Environmental Management Act or relevant laws in relation to the proposed service;
 - (c) provide proof of adequate liability insurance coverage in relation to the proposed service which satisfies the prescribed liability insurance coverage requirements;
 - (d) provide proof of the applicant's ability to satisfy the prescribed financial requirements;
 - (e) provide proof of the safety assurance systems which are capable of averting damage during operations;
 - (f) provide proof that the organizational structure and the requisite professional competence and skills of the applicant satisfies the safety requirements;
 - (g) provide a safety management integrated plan; and
 - (h) any other additional information as the Authority may consider necessary or as may be prescribed.

76. Eligibility criteria for a railway operating licence

(1) A person shall be eligible for the grant of a railway operating licence, if such person—

- (a) is a body corporate;
- (b) has been in railway operation for a period of not less than fifteen years;
- (c) is not insolvent; and
- (d) any other criteria which the Authority may determine or prescribe.

(2) the issuance of a railway operating license under subsection 1 shall be given to a body corporate with a shareholding of at least 15 % per centum is held by Ugandan citizens.

(3) A foreign company that wishes to apply for a railway operating license shall comply with the provisions of the Companies Act.

(4) In applying the preference referred to in subsection (2), where a foreign company is structured or managed to allow full advantage by Ugandans in the interest of promoting domestic capacity development, such foreign company shall be given preference.

77. Issuance of licences

- (1) The Authority may grant or decline to grant an application for a railway operating licence.
- (2) In exercising its discretion under subsection (1), the Authority shall have regard—
 - (a) to the public interest, including the interest of persons requiring and those of persons providing facilities for transport;
 - (b) on whether there is sufficient capacity on the railway network;
 - (c) to such other matters as may be prescribed by regulations.
- (3) Where the Authority has declined to grant a licence it shall within the prescribed period notify the applicant with written reasons for its decision.
- (4) Any matter affecting licences to operate a network, operate trains or stations will be adjudicated upon by the Authority.

78. Conditions for issuance of a licence

- (1) A railway operating licence shall contain such conditions that the Authority considers appropriate and during the period of validity of the licence it shall be subject to any new conditions for the operation that the Authority may lay down to ensure compliance with this Act.
- (2) The Authority may, from time to time, either on its own motion or on the application of a train operator, cancel or vary, any condition of the railway operating licence in accordance with the provisions of this Act.
- (3) The Authority shall publish the names of every licence holder and the conditions of the licence.
- (4) A train operator who fails to comply with any condition contained in its railway operating licence commits an offence and shall be liable, on conviction, to a fine not exceeding (Five hundred thousand shillings or to imprisonment for a term not exceeding three year or to both.

79. Duration of a licence

- (1) Subject to the provisions of subsection (2), every railway operating licence shall, unless previously revoked, remain in force for five years from the date of issue.
- (2) An applicant shall apply for a renewal of railway operating licence at least six months before the expiry of the licence.
- (3) If on the date of the expiration of a railway operating licence, proceedings are pending before the Authority on an application for the grant of a new railway operating licence, the existing railway operating licence shall continue in force until such application is determined.

80. Transferability of a railway operating licence

A railway operating licence shall not be transferable.

81. Power of the Authority to revoke or suspend licences

(1) The Authority may in accordance with this Act, revoke or suspend a railway operating licence, where the licensee—

- (a) is in breach of the provisions of this Act or regulations made there under;
- (b) fails to comply with a condition for the issuance of the railway operating licence

(2) The Authority shall, where it revokes or suspends a railway operating licence, inform the train operator in writing of the reasons for such revocation or suspension.

(3) Matters affecting the revocation of a licence will be adjudicated by the Transport Licensing Board.

82. Appeals against the decision of the Authority

A person who—

- (a) being an applicant for the grant or variation of a railway operating licence, is aggrieved by the decision of the Authority on the application;
- (b) having made an objection to any such application as aforesaid, being an objection which the Authority is bound to take into consideration, is aggrieved by the decision of the Authority thereon; or
- (c) being the train operator, is aggrieved by the revocation or suspension thereof, may within the time and in the manner prescribed appeal to the Minister.

83. False Statements

A person who, for the purpose of—

- (a) obtaining a railway operating licence;
- (b) obtaining a variation of a railway operating licence;
- (c) preventing the grant or variation of any railway operating licence; or
- (d) procuring the importation of any condition or limitation in relation to a railway operating licence;
- (e) knowingly omits, misleads or makes any false statement, commits an offence and shall be liable, on conviction to a fine not exceeding seventeen million thousand shillings or to imprisonment for a term not exceeding one year.

84. Fees in respect of licences

The holder of a railway operating licence shall pay such fees as the Minister may prescribe.

PART VII —ACCESS TO NATIONAL RAILWAYS NETWORK BY TRAIN OPERATORS

85. Network statement

(1) The Authority shall prepare and publish a network statement for its railway network.

(2) The network statement shall contain the following information—

- (a) a section setting out the nature of the infrastructure which is available to train operators and the conditions of access to it; that sets out in detail the general rules, timelines, procedures and criteria for charging and capacity allocation schemes, including such other information as is required to enable applications for infrastructure capacity;
- (b) a section on charging principles and tariffs, which shall contain appropriate details of the charging scheme as well as sufficient information on charges that apply to the services listed in the Third Schedule and which shall detail the methodology, rules and, where applicable, scales used for the application of sections 101(3), 102 and 103;
- (c) a section on the principles and criteria for capacity allocation which shall—
 - (i) set out the general capacity characteristics of the infrastructure which is available to train operators and any restrictions relating to its use, including likely capacity requirements for maintenance;
 - (ii) specify the procedures and deadlines which relate to the capacity allocation process. It shall contain specific criteria which are employed during that process, in particular—

(A) the procedures according to which a train operator may request capacity from the network operator or the infrastructure manager;

(B) the requirements governing a train operator;

(C) the schedule for the application and allocation processes;

(D) the principles governing the coordination process;

(E) the procedures which shall be followed and criteria used where infrastructure is congested;

(F) details of restrictions on the use of infrastructure; and

(G) any conditions by which account is taken of previous levels of use of capacity in determining priorities for the allocation process. The section shall detail the measures taken to ensure the adequate treatment of freight services, passenger services and requests subject to the *ad hoc* procedure.

(3) The network statement shall be kept up to date and modified as necessary.

(4) The network statement shall be published by the Authority no less than 120 days in advance of the deadline for requests for infrastructure capacity

86. Capacity rights

(1) Infrastructure capacity shall be allocated by the Authority and once allocated to a train operator may not be transferred by that train operator to another train operator.

(2) The Authority shall allocate infrastructure capacity on a transparent, fair and non-discriminatory basis.

(3) The right to use specific infrastructure capacity in the form of a train path may be granted to train operators for a maximum duration of one working timetable period.

(4) The Authority may enter into a framework agreement for the use of capacity on the relevant railway infrastructure for a longer term than one working timetable period.

87. Applicants for infrastructure capacity

(1) Only train operators may apply to the Authority for infrastructure capacity.

(2) The Authority may set requirements with regard to applicants to ensure that its legitimate expectations about future revenues and use of the infrastructure are safeguarded, provided that such requirements shall—

- (a) be appropriate, transparent and non-discriminatory;
- (b) be published as part of the allocation principles in the network statement.

(3) The requirements in subsection (2) may only include—

- (a) the provision of a financial guarantee that must not exceed an appropriate level which shall be proportional to the contemplated level of activity of the applicant; and
- (b) assurance of the capability to prepare compliant bids for infrastructure capacity

88. Framework agreements

(1) Subject to the approval of the Minister, a framework agreement may be concluded between the Authority and a train operator.

(2) The framework agreement shall specify the characteristics of the infrastructure capacity required by and offered to the train operator over a period of time exceeding one working timetable period.

(3) No framework agreement shall be such as to preclude the use of the relevant infrastructure by other train operators.

(4) A framework agreement—

- (a) shall allow for the amendment or limitation of its terms to enable better use to be made of the railway infrastructure;
- (b) shall be concluded for a period of five years or less, subject to renewal.

(5) A train operator who is already a party to a framework agreement shall apply in accordance with that agreement.

89. Schedule for the allocation process

The Authority shall adhere to the following capacity allocation schedule—

- (a) the working timetable shall be established once per calendar year;
- (b) the final date for receipt of requests for capacity to be incorporated into the working timetable shall be no more than ninety days in advance of the entry into force of the working timetable; and
- (c) not later than one hundred and twenty days after the deadline for submission of requests by train operators, the Authority shall prepare a draft timetable.

90. Scheduling

(1) The Authority shall as far as possible meet all requests for infrastructure capacity, and shall as far as possible take account of all constraints on train operators, including the economic effect on their business.

(2) The Authority may give priority to specific services within the scheduling and coordination process but only as set out in section 89.

(3) The Authority shall consult interested parties about the draft working timetable and allow them at least thirty days to present their views.

(4) For the purpose of subsection (3), “interested parties” shall include all those who have requested infrastructure capacity as well as other parties who wish to have the opportunity to comment on how the working timetable may affect their ability to procure rail services during the working timetable period.

91. Co-ordination process

(1) When the Authority encounters conflicts between different requests during the scheduling process set out in section 90, it shall attempt, through coordination of the requests, to ensure the best possible matching of all requirements.

(2) When a situation requiring coordination arises, the Authority shall have the right, within reasonable limits, to propose infrastructure capacity that differs from that which was requested.

(3) The Authority shall attempt, through consultation with the appropriate train operators, to resolve any conflicts.

(4) The principles governing the coordination process shall be defined in the network statement.

92. Congested infrastructure

(1) Where after coordination of the requested paths and consultation with train operators it is not possible for the Authority to satisfy requests for infrastructure capacity adequately, then the Authority shall immediately declare the section of infrastructure on which this has occurred to be congested; this shall also be done for infrastructure which it can be foreseen will suffer from insufficient capacity in the near future.

(2) When infrastructure has been declared to be congested, the Authority shall carry out a capacity analysis as described in section 94, unless a capacity enhancement plan as described in section 95 is already being implemented.

(3) When infrastructure access charges in accordance with section 99 have not been levied or have not achieved a satisfactory result and the infrastructure has been declared to be congested, the Authority may in addition employ priority criteria to allocate infrastructure capacity.

(4) The priority criteria shall take account of the importance of a service to the public, relative to any other service which will consequently be excluded.

(5) The procedures which shall be followed and criteria used where infrastructure is congested shall be set out in the network statement.

93. *Ad hoc* requests

(1) The Authority shall respond to *ad hoc* requests for individual train paths within five working days; information supplied on available spare capacity shall be made available to all train operators who may wish to use this capacity.

(2) The Authority shall where necessary undertake an evaluation of the need for reserve capacity to be kept available within the final scheduled working timetable to enable them to respond rapidly to foreseeable *ad hoc* requests for capacity; this subsection shall also apply in cases of congested infrastructure.

94. Capacity analysis

(1) The objective of capacity analysis is to determine the restrictions on infrastructure capacity which prevent requests for capacity from being adequately met, and to propose methods of enabling additional requests to be satisfied; this analysis shall identify the reasons for the congestion and what measures might be taken in the short and medium term to ease the congestion.

(2) The analysis shall consider the infrastructure, the operating procedures, the nature of the different services operating and the effect of all these factors on infrastructure capacity; measures to be considered shall include in particular re-routing of services, re-timing services, speed alterations and infrastructure improvements.

(3) A capacity analysis shall be completed within 180 days of the identification of infrastructure as congested.

95. Capacity enhancement plan

(1) Within one hundred and eighty days of the completion of a capacity analysis, the Authority shall produce a capacity enhancement plan.

(2) A capacity enhancement plan shall be developed after consultation with the train operators who use the relevant congested infrastructure and shall identify—

(a) the reasons for the congestion;

- (b) the likely future development of traffic;
- (c) the constraints on infrastructure development;
- (d) the options and costs for capacity enhancement, including likely changes to infrastructure access charges.

(3) The capacity enhancement plan shall also, on the basis of a cost benefit analysis of the possible measures identified, determine what action shall be taken to enhance infrastructure capacity, including a calendar for implementation of the measures.

(4) The capacity enhancement plan shall be approved by the Minister.

(5) The Authority shall cease to levy any infrastructure access charges which are levied for the relevant infrastructure under section 99(2) in cases where—

- (a) it does not produce a capacity enhancement plan; or
- (b) it does not make progress with the action plan identified in the capacity enhancement plan.

(6) The Authority may, subject to the approval of the Minister, continue to levy any infrastructure access charges which are levied for the relevant infrastructure under section 95(2) if—

- (a) the capacity enhancement plan cannot be achieved for reasons beyond its control; or
- (b) the options available are not economically or financially viable.

96. Surrender of train paths

(1) In particular for congested infrastructure, the Authority shall require a train operator to surrender a train path allocated to it which, over a period of at least thirty days, has been used less than a threshold quota to be laid down in the network statement, unless this was due to non-economic reasons beyond the train operator's control.

(2) The Authority shall specify in the network statement conditions whereby it will take account of previous levels of use of train paths in determining priorities for the allocation process.

97. Infrastructure capacity for scheduled maintenance

(1) A request for infrastructure capacity to perform maintenance shall be submitted during the scheduling process provided for in section 90.

(2) The Authority shall take into account the effect of infrastructure capacity reserved for scheduled track maintenance on train operators.

98. Special measures to be taken in the event of disturbance

(1) In the event of disturbance to train movements caused by technical failure or accident the Authority shall take all necessary steps to restore the normal situation and to that end it shall draw up a contingency plan listing the various public bodies to be informed in the event of serious incidents or serious disturbance to train movements.

(2) In an emergency and where absolutely necessary on account of a breakdown making the infrastructure temporarily unusable, the paths allocated may be withdrawn without warning for as long as is necessary to repair the system, although the train operator affected by this withdrawal will be notified by the Authority as soon as possible as to the nature of the emergency and for how long the path will be withdrawn.

(3) The Authority may, if it deems it necessary, require train operators to make available to it the resources which it feels are the most appropriate to restore the normal situation as soon as possible.

99. Infrastructure access charges

(1) The Authority shall levy and collect such infrastructure access charges as it determines on train operators using capacity on the national railway network.

(2) Except where specific arrangements are made under section 95(2), the Authority shall base the charging scheme in use on the same principles over the whole of the national railway network.

(3) The Authority shall ensure that the application of the charging scheme results in equivalent and non-discriminatory access charges for different train operators that perform services of equivalent nature in a similar part of the market and that the access charges actually applied comply with the rules set out in the network statement.

100. Services

(1) Train operators shall, on a non-discriminatory basis, be entitled to the minimum access package and track access to service facilities that are described in No. 1 of the Third Schedule.

(2) The supply of services referred to in No. 2 of the Third Schedule shall be provided in a non-discriminatory manner and requests by train operators may only be rejected if viable alternatives under market conditions exist.

(3) Where the Authority offers any of the range of services described in No. 3 of the Third Schedule as additional services it shall supply them upon request to a train operator.

(4) Train operators may request from the Authority a further range of ancillary services set out in No. 4 of the Third Schedule, without the Authority being obliged to supply these services.

(5) Infrastructure access charges paid to the Authority by the train operators shall be used by the Authority to fund its business.

101. Criteria for setting of infrastructure access charges

(1) The Authority shall provide all necessary information on the infrastructure access charges levied and must be able to justify that infrastructure access charges invoiced to each train operator, pursuant to sections 99 to 104, comply with the methodology, rules, and where applicable, scales set out in the network statement.

(2) Without prejudice to subsection (3) or to section 98, the infrastructure access charges for the minimum access package and track access to service facilities shall be set at the cost that is directly incurred as a result of operating the train service.

(3) The infrastructure access charge may include a charge which reflects the scarcity of capacity of the identifiable segment of the infrastructure during periods of congestion.

(4) For the purpose of infrastructure maintenance, separate infrastructure access charges may be levied for capacity used and such charges shall not exceed the net revenue loss to the Corporation caused by the maintenance.

102. Exceptions to charging principles

(1) In order to obtain full recovery of the costs incurred by the Authority, the Authority may levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, while guaranteeing the competitiveness of train operators in relation to other modes of transport, provided that the charging system does not penalize train operators for the productivity gains they achieve and that it does not prevent the use of the railway infrastructure by train operators which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.

(2) For specific investment projects, in the future, or that have been completed not more than fifteen years before the entry into force of this Act, the Authority may set or continue to set higher infrastructure access charges on the basis of the long-term costs of such projects if they increase efficiency or cost-effectiveness and could not otherwise be or have been undertaken.

(3) If the Authority intends to modify the essential elements of the charging system referred to in subsection (1), it shall make them public at least 90 days in advance.

103. Discounts

(1) With the exception of what is provided in subsection (2), discounts shall be limited to the actual saving of the administrative cost to the Authority and in determining the level of discount, no account may be taken of cost savings already internalised in the charge levied.

(2) The Authority may introduce schemes available to all train operators, for specified traffic flows, granting time limited discounts to encourage the development of new rail services, or discounts encouraging the use of considerably underutilised lines.

(3) Discounts may relate only to infrastructure access charges levied for a specified infrastructure section and similar discount schemes shall apply for similar services.

104. Reservation charges

The Authority may levy an appropriate charge for capacity that is requested but not used providing thereby an incentive for efficient use of capacity by the train operator.

105. Confidentiality of commercial information

The Authority shall respect the confidentiality of commercial information provided to it by train operators under this chapter.

106. Appeals to the Minister

(1) Any train operator may appeal to the Minister, within 14 days, if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions taken by the Authority concerning—

- (a) the network statement;
- (b) criteria contained within it;
- (c) the allocation process and its result;
- (d) the charging scheme; or
- (e) the level or structure of infrastructure access charges which it is, or may be, required to pay.

(2) The Minister shall ensure that charges set by the Authority comply with sections 99 to 104 and are non-discriminatory.

(3) Negotiation between train operators and the Authority concerning the level of infrastructure access charges shall only be permitted if these are carried out under the supervision of the Authority and shall intervene if negotiations are likely to contravene the requirements of sections 99 to 104.

(4) The Minister shall have the power to request relevant information from the Authority or train operators, which must be supplied to it within fourteen days.

(5) The Minister shall be required to decide on any complaints and take action to remedy the situation within a maximum period of 60 days from receipt of all relevant information.

(6) A decision of the Minister shall be binding on all parties covered by that decision.

(7) In the event of an appeal against a refusal to grant infrastructure capacity, or against the terms of an offer of capacity, the Minister shall either confirm that no modification of the Authority's decision is required, or it shall require modification of that decision in accordance with directions specified by the Minister.

PART VIII – CARRIAGE OF PASSENGERS AND GOODS

Responsibility as an operator

107. Liability for loss of life, etc. of passengers

A rail operator shall not be liable for the loss of life of, or for personal injury to, any passenger carried by it except where the loss of life or personal injury is caused by the want of ordinary care, diligence or skill on the part of the rail carrier or of any employee.

108. No liability for delay in arrival of passengers, etc.

A rail operator shall not be liable for any loss arising from the delay to any passenger caused—

- (a) by the failure of any train to start on or complete any journey; or
- (b) by the late starting or late arrival of any train from whatever cause arising.

109. Goods

(1) A rail operator shall be liable for any loss or mis-delivery of, or damage to, goods carried by it occurring while the goods are in transit from any cause whatsoever unless the rail carrier proves that such loss, misdelivery or damage, arose from—

- (a) act of God;
- (b) act of war;
- (c) act of terrorism;
- (d) seizure under legal process;
- (e) act or order of the Government;
- (f) act or omission of the consignor, his servant or agent;
- (g) inherent liability to wastage in bulk or weight, latent or inherent defect, vice or natural deterioration of the goods; or
- (h) casualty including fire or explosion: Provided that where the loss, misdelivery or damage occurs in any of the cases specified in this subsection due to the failure of the rail carrier, or of any employee, to use reasonable foresight and care in the carriage of goods, the rail carrier shall not be relieved from liability for such loss, misdelivery or damage.

(2) The rail carrier shall not be liable for loss, misdelivery or damage in respect of goods in relation to which an account false in any material particular has been given under section 106 or any incorrect or insufficient address for delivery has been given and such loss, misdelivery or damage is in any way caused by such false account or incorrect or insufficient address.

(3) The rail carrier shall not in any circumstances be liable for loss, misdelivery or damage in respect of goods—

- (a) where there has been fraud on the part of the consignor;
- (b) unless a document acknowledging receipt of such goods for carriage by the rail carrier has been given;
- (c) where there is a loss of a particular market whether held daily or at intervals; or
- (d) where the loss, misdelivery or damage arises from insufficient or improper packing or from riots, civil commotion, strikes, lock-outs, stoppage or restraint of labor from whatsoever cause whether partial or general.

110. Liability for delay, etc., of goods

A rail operator is not be liable for any loss arising from delay to, detention of or deviation in the carriage of goods unless such delay, detention or deviation is caused by the want of reasonable foresight and care on the part of the rail carrier or any employee:

Provided that the rail carrier shall not in any circumstances be liable for any loss arising from the delay to, detention of or deviation in the carriage of goods—

- (a) where there has been fraud on the part of the consignor;
- (b) unless a document acknowledging the receipt of such goods for carriage by the rail carrier has been given;
- (c) where there is a loss of a particular market whether held daily or at intervals; or (d) where the delay, detention or deviation arises from insufficient packing or address, riots, civil commotions, strikes, lock-outs, stoppage or restraints of labor from whatsoever cause whether partial or general.

111. Limitation of liability for animals

(1) The liability of the rail operator in respect of any animal shall not in any case exceed the appropriate amount set out in a tariff notice, unless at the time of the acceptance of such animal by the rail carrier for carriage the consignor, or his agent, declared that the value of the animal exceeded such appropriate amount and paid, or agreed to pay, such additional charges as may be determined in the Tariff Notice in respect of such excess value, and thereupon the liability of the rail carrier shall not in any case exceed the declared value.

(2) In every proceeding against the rail carrier for the recovery of any sum in respect of any animal, the burden of proving the value of the animal and, where the animal has been injured, the extent of the injury, shall be upon the claimant.

112. Limitation of liability for loss, etc., of specific articles

(1) The liability of a rail operator in respect of any prescribed article(s), and contained in any parcel or package, shall not, in any circumstances, exceed one thousand shillings unless at the time of acceptance of such parcel or package by the rail carrier for carriage the consignor or his or her agent declared that the value of such article or articles exceeded one forty thousand shillings and paid, or agreed to pay, such additional charges as may be determined in the Tariff Notice in respect of such excess value; and thereupon the liability of the rail carrier shall not in any case exceed the declared value.

(2) It shall be a condition of the carriage of any parcel or package containing any article or articles the value of which has been declared to be in excess of forty thousand shillings that the contents of such parcel or package may be inspected by an authorized employee at the time of such declaration.

(3) In any proceedings against the rail carrier for the recovery of any sum in respect of any article or articles the value of which has been declared to be in excess of one thousand shillings, the burden of proving the value of the article or articles and of any loss or damage thereto shall be upon the claimant.

113. Limitation of liability for loss, etc., where false account given

The liability of a rail operator in respect of any goods carried by the rail carrier in relation to which an account false in any material particular has been given under section 110 shall not in any case exceed the value of the goods as calculated in accordance with the description contained in such false account.

114. Limitation of liability by regulations

The Minister may prescribe the conditions and amounts by which a rail carrier may limit its liability under this Act.

Responsibility as a Warehouseman

115. Liability for loss of goods, etc.

(1) Subject to this Act, or any contract, the rail carrier shall not be liable for the loss, misdelivery or detention of, or damage to, goods—

- (a) delivered to, or in the custody of, the rail carrier otherwise than for the purpose of carriage;
- (b) accepted by the rail carrier for carriage where such loss, misdelivery, detention or damage occurs otherwise than while the goods are in transit,

(2) except where the loss, misdelivery, detention or damage is caused by the want of reasonable foresight and care on the part of the rail carrier or of any employee:

Provided that—

- (a) the rail carrier shall in no case be liable for the loss, misdelivery, detention or damage arising from—
 - (i) act of God;
 - (ii) act of war;
 - (iii) act of terrorism;
 - (iv) seizure under legal process;
 - (v) act or order of the Government;
 - (vi) act or omission of the consignor, consignee, or depositor, or of the servant or agent of any such person;
 - (vii) fire, flood, tempest, riots, civil commotions, strikes, lock-outs, stoppage or restraint of labour from whatever cause whether partial or general;
 - (viii) inherent liability to wastage in bulk or weight, latent or inherent defect, vice or natural deterioration;
 - (ix) deficiency in the contents of unbroken packages; or
 - (x) insufficient packing or leakage from defective drums, containers or packages; and
- (b) where the loss, misdelivery, detention or damage occurs—
 - (i) in relation to goods accepted by the Authority for carriage otherwise than while the goods are in transit, the limitation of the liability of the Authority contained in sections 112, 113 and 114 shall continue to apply;
 - (ii) in relation to goods accepted by the Authority for warehousing, the limitation of the liability of the Authority contained in section 115 shall apply.

116. Limitation of liability for loss, etc., of goods deposited in cloakroom

(1) The liability of the rail carrier for any loss or misdelivery of, damage to or delay in the delivery of any goods deposited in a cloakroom shall not in any case exceed two hundred shillings unless at the time of such deposit the person depositing the goods declared that the value thereof exceeded that amount and paid, or agreed to pay in writing, such additional charge as may be determined in the Tariff Notice in respect of such excess

value; and thereupon the liability of the rail carrier shall not in any case exceed such declared value.

(2) For the purposes of this section the expression “cloakroom” means any place provided by the rail carrier in connection with the transport services provided by it as a facility for the temporary deposit of goods by passengers and other persons.

Operations of the rail operator

117. Rail carrier shall determine conditions for the carriage of passengers and luggage

- (1) The rail operator shall—
- (a) determine the conditions upon which passengers and luggage shall be carried by the rail carrier and different conditions may be determined in different cases; and such conditions shall be published in the Tariff Notice and shall, subject as aforesaid, have effect from the date of such publication or from such later date as may be specified therein;
 - (b) determine the rates, fares and charges for the carriage of passengers and luggage by the rail carrier and such rates, fares and charges shall be published in the Traffic Notice and shall, subject as aforesaid, have effect from the date of such publication or from such later date as may be specified therein: Provided that provision shall be made for the carriage of a specified amount of baggage by a passenger free of charge, and different amounts may be determined for passengers travelling by different classes;
 - (c) determine the different classes of accommodation available to passengers in trains of the rail carrier.

(2) Notwithstanding the provision of subsection (1), the rail operator may, in relation to the special circumstances of any particular case, determine conditions, rates, fares and charges applicable to such case for the carriage of passengers and luggage by the rail carrier and such conditions, rates, fares and charges shall have immediate effect in relation to such case:

Provided that—

- (a) such conditions, rates, fares and charges shall as soon as practicable after such determination be published in the tariff notice; and
- (b) the determination of such conditions, rates, fares and charges shall not of itself constitute an undue preference.

118. General right of persons to be carried as passengers

Any person who has tendered to an authorized employee of the rail carrier the proper fare for the ticket he desires shall be entitled to obtain such ticket and to be carried as a passenger by the rail carrier in accordance with the conditions subject to which the ticket is issued:

Provided that if, in the opinion of an authorized employee, a person who applies for a ticket, or a person in possession of a ticket or free pass, appears—

- (a) to be suffering from any mental disorder;

- (b) to be suffering from any contagious or infectious disease; or
- (c) to be under the influence of liquor, such person shall not be entitled to obtain such ticket or to be carried as a passenger save under, and in accordance with, any special provisions dealing with the carriage of any such person.

119. General conditions on which tickets, etc., issued

(1) Every ticket and free pass shall be issued by the rail operator subject to the provisions of this Act and, in addition to any other conditions, to the condition that—

- (a) there is room available in the train of the class for which the ticket or free pass is issued;
- (b) an authorized employee may require the passenger to move from one compartment to another of the same class for the purpose of the better use of the accommodation of the train; and (c) the passenger shall, on being required so to do, present his ticket or free pass for examination by an authorized employee and shall deliver up the ticket or pass to the employee—
 - (i) in the case of a ticket or free pass issued for a particular journey, at or near the end of such journey;
 - (ii) in the case of a season ticket or free pass, at the expiration of the period for which it was issued.

(2) If no room as is referred to in paragraph (a) of subsection (1) is available, the holder of a ticket—

- (a) may obtain a refund of the fare which he has paid on his returning the ticket to an authorized employee as soon as practicable; or
- (b) may elect, subject to there being available room to travel in a lower class and shall, upon drawing as soon as practicable the attention of an authorized employee to such fact, be entitled to obtain from such employee a certificate that he is entitled to a refund and shall, on presenting that certificate to an authorized employee, be entitled to a refund of the difference between the fare which he paid and the fare payable in respect of the class in which he travelled:

Provided that the provisions of this subsection relating to a refund shall not apply to the holder of a season ticket.

120. Persons without valid ticket, etc., may be removed from train, etc.

A person shall not be upon any train of the rail carrier for the purposes of travelling therein as a passenger unless he is in possession of a valid ticket or free pass; and any person found on a train without a valid ticket or free pass may, without prejudice to any other action which may be taken against him, be required by any employee of the rail carrier to leave the train and, if he does not do so, may be removed there from with such force as may be reasonable and necessary in the circumstances.

121. Fares, etc., payable by persons travelling without a valid ticket, etc.

- (1) A person who—
 - (a) travels on any train of the rail operator without a valid ticket or free pass; or
 - (b) being in, or having come from, any such train does not present his ticket or free pass for examination or does not deliver up his ticket or free pass in accordance with the conditions on which the ticket or free pass is issued, shall be liable to

pay on demand by an authorized employee the fare for the distance he has travelled or proposes to travel and, in addition, such excess charges as the rail carrier may determine and publish in the Tariff Notice; and for the purpose of ascertaining such fare it shall be presumed that such person has travelled from the station—

- (i) from which the train originally started; or
 - (ii) if the tickets or free passes of passengers have been examined during the journey and found to be in order, from the place where they were last examined and found in order, unless he satisfies such authorized employee to the contrary.
- (2) Any person who—
- (a) travels in a class of a train higher than that for which he is in possession of a valid ticket or free pass; or
 - (b) travels in a train beyond the place authorized by his ticket or free pass, shall be liable to pay on demand by an authorized employee a fare equal to the difference between the fare he has paid and that which he should have paid and, in addition, such excess charges as the rail carrier may determine and publish in the Tariff Notice.

(3) If, on demand by an authorized employee, any person refuses to pay the fare and excess charge for which he is liable under this section, any authorized employee or any police officer may, if there is reasonable ground for belief that there would be difficulty or delay in bringing such person before the court by any other means, arrest and detain that person without a warrant and bring him, as soon as practicable, before a court having jurisdiction to deal with him in accordance with the provisions of this Act.

122. Conditions of carriage of luggage

(1) Every passenger shall on payment of the appropriate charge, if any, be entitled to deliver his or her luggage to an authorized employee for carriage by the rail carrier in the appropriate part of the train and to receive a document of receipt for each piece of luggage so delivered.

(2) Luggage shall be carried by the rail operator subject to this Act, and, in addition to any other conditions—

- (a) to the condition that unless the luggage is delivered to an employee for carriage in accordance with subsection (1), it shall be carried at the risk of the passenger; and
- (b) to the condition that the provisions of this Act in respect of the carriage of goods shall apply to the carriage of luggage save in so far as it is otherwise specifically provided.

123. Rail operator may determine conditions for carriage of goods, etc.

(1) The rail operator may determine the conditions upon which goods shall be carried or warehoused by the rail carrier and different conditions may be determined in different cases; and such conditions shall be published in the Tariff Notice and shall, subject as aforesaid, have effect from the date of such publication or from such later date as may be specified therein.

(2) Notwithstanding subsection (1), the rail carrier may, in relation to the special circumstances of any particular case, determine conditions, rates and charges applicable to such case for the carriage or warehousing of goods by the rail carrier or for any other service or facility and such conditions, rates and charges shall have immediate effect in relation to such cases:

Provided that—

- (a) such conditions, rates and charges shall, if they are of a continuing nature, be available to the public on request; and
- (b) the determination of such conditions, rates and charges shall not of itself constitute an undue preference.

124. General right to have goods carried

Any person who has tendered to an authorized employee the appropriate rates and charges, and has complied with the conditions upon which goods may be accepted for carriage by the rail operator, shall be entitled to receive a document of receipt for such goods and to have such goods carried by the rail carrier in accordance with the conditions of carriage:

Provided that if, in the opinion of an authorized employee—

- (a) any animal tendered for carriage appears to be suffering from any infectious or contagious disease;
- (b) any goods tendered for carriage are goods to which section 123 applies;
- (c) any goods tendered for carriage exceed the maximum weight or dimension specified in the Tariff Notice;
- (d) any goods tendered for carriage are insufficiently or improperly packed;
- (e) any animal tendered for carriage is wild or dangerous;
- (f) the carriage of any goods would at any stage of the transit thereof be contrary to any law; or
- (g) facilities for dealing with the goods tendered for carriage are not available at the place where such goods are tendered or at the place of destination or at any place en route, the person tendering such goods for carriage shall not be entitled to have such goods carried by the rail carrier save, when such goods are accepted for carriage, under and in accordance with any special provisions dealing with the carriage of such goods.

125. Description, etc., of goods to be delivered

(1) The consignor of, or the person tendering, any goods to the rail carrier for carriage or warehousing and, on request by an authorized employee, the consignee of, or person receiving, any goods which have been carried or warehoused by the rail carrier, shall deliver to an authorized employee an account in writing signed by the consignor, person or consignee, as the case may be, containing such a description of the goods as may be sufficient to enable such employee to determine the rates and charges payable in respect of the carriage or warehousing thereof by the rail carrier.

(2) Any authorized employee may, for the purpose of checking any account delivered under subsection (1), require such consignor, person or consignee, as the case may be, to permit him to examine such goods.

(3) If such consignor, person or consignee fails to deliver the account referred to in subsection (1) or to permit such goods to be examined as required under subsection (2), an authorized employee may—

- (a) in respect of goods which are tendered to the rail carrier for carriage or warehousing, refuse to accept the goods for such carriage or warehousing unless in respect thereof a rate or charge not exceeding the highest rate or charge payable for any class of goods is paid; or
- (b) in respect of goods which have been carried by the rail carrier, refuse to deliver such goods unless in respect thereof a rate or charge not exceeding such highest rate or charge is paid.

(4) If, in respect of goods which have been carried or warehoused by the rail carrier, an account delivered under subsection (1) is found to be false in any material particular with respect to the description of any goods to which it purports to relate, an authorized employee may refuse to deliver such goods unless, in respect of the carriage or warehousing of the goods, a rate or charge not exceeding double the highest rate or charge payable for any class of goods is paid.

126. Goods may be sold to pay fares, rates, etc.

(1) Where any person fails to pay on demand made by an authorized employee any fare, rate or charge due from him as a passenger or in respect of any goods, the rail carrier may detain the whole or any part of such goods including the luggage of the passenger or, if the value of the goods is, in the opinion of the authorised employee insufficient to pay for the rate or charge due or if they have been removed from the possession of the rail operator, any other goods of such person which may be in, or may thereafter come into, the possession of the rail operator.

(2) Where any goods have been detained under subsection (1), the rail carrier may, if the fare, rate or charge due is not sooner paid, sell by public auction sufficient of such goods to produce the fare, rate or charge so owing and all the expenses of such detention and sale; and in the case of—

- (a) perishable goods, such auction may take place at once;
- (b) any other goods, such auction may take place on the expiration of at least fifteen days' notice, published in one or more local newspapers, of the intended auction:

Provided that imported goods shall not be sold under this section until they have been cleared by the Uganda Revenue Authority in accordance with the relevant laws.

(3) The rail carrier may, out of the proceeds of any sale effected under subsection (2), retain a sum equal to the fare, rate or charge due and the expenses of the detention and sale and shall deliver the balance, if any, of such proceeds together with such of the goods, if any, as remain unsold to the person appearing to the rail carrier to be entitled thereto: Provided that if such person fails, after notice so to do, to remove within a reasonable time the goods, if any, remaining unsold, the rail carrier may sell such goods and dispose of the proceeds of such sale in accordance with provisions of this section.

(4) Nothing in this section shall prejudice the right of the rail carrier to recover any such fare, rate or charge, or any part thereof, by any other lawful means.

127. Unclaimed goods in possession of the rail operator

(1) Where any goods in the possession of the rail operator are not claimed by the owner or person appearing to the rail carrier to be entitled thereto, the rail carrier shall, if such owner or person is known, take all reasonable steps to cause a notice to be served upon him requiring him to remove the goods. If—

- (a) the owner of any goods in the possession of the rail carrier is not known and no person appears to be entitled thereto; or
- (b) the notice referred to in subsection (1) cannot for any reason be served; or
- (c) there has been a non-compliance with the provisions of any notice served under subsection (1), the rail operator may, within a reasonable time not being less (except in the case of perishable goods) than 90 days, sell the goods and retain the proceeds of the sale thereof:

Provided that imported goods shall not be sold under this section until they have been cleared by the Uganda Revenue Authority in accordance with the relevant laws.

128. Indemnity where goods claimed by two persons, etc.

Where—

- (a) any goods, or the proceeds of the sale of any goods, are in the possession of the rail carrier and such goods or proceeds are claimed by two or more persons; or
- (b) any person claiming any goods in the possession of the rail carrier does not produce valid documents showing that he is entitled to take delivery thereof, the rail carrier may withhold delivery of the goods or proceeds until the person appearing to the rail carrier to be entitled thereto has given an indemnity to his satisfaction against the claim of any other person with respect to such goods or proceeds

129. Dangerous or offensive goods, etc.

(1) A person shall not take with him upon any train of the rail carrier or tender to the rail carrier for carriage or warehousing any dangerous or offensive goods or any goods which are likely to cause damage to any persons or property without giving notice of the nature of such goods—

- (a) in the case of goods taken by a person, to the employee in charge of the station at which such person commences his journey; or
- (b) in the case of goods tendered to the rail carrier for carriage or warehousing, to the employee to whom the goods are tendered.

(2) An authorized employee may—

- (a) refuse to permit any goods to which this section applies to be taken by any person upon any train of the rail operator;
- (b) refuse to accept the goods for carriage or warehousing or accept them only under, and in accordance with, any special provisions dealing with the carriage or warehousing of any such goods;
- (c) require the goods to be marked and packed in such manner as he may reasonably direct.

(3) Where an authorized employee has reason to believe that any goods to which this section applies are being carried or warehoused, or have been accepted for carriage or warehousing, in contravention of subsection (1) or (2) he may examine such goods and if, on examination, they are found to be goods to which this section applies he may order their removal from any train of, or from premises occupied by, the rail carrier.

(4) Nothing in this section shall—

- (a) derogate from the provisions of any law in force relating to the possession or transport of explosives, petroleum, firearms or ammunition;
- (b) apply to any goods carried by any member of the military or by any police officer, in the course of his duty.

130. General

(1) The quarantine of goods in transport shall be carried out in accordance with relevant laws and regulations.

(2) If a certain kind of infectious disease which demands quarantine as stated in legal provisions is discovered in a railway station or on board a passenger train, the railway sanitation and quarantine authority shall carry out the necessary quarantine process in collaboration with the Ministry responsible for Health.

(3) The rail operator shall cause to be prepared and published in such manner as it may think fit—

- (a) a Tariff Notice containing all matters which under this Act are required to be contained therein together with such other matters as, under this Act, may be determined by the rail carrier and such other matters as the rail carrier may think fit;
 - (b) such other books, time-tables and documents as under this Act are required to be kept.
- (4) There shall be available for public inspection at every booking office—
- (a) a copy of the Tariff Notice containing all amendments for the time being in force;
 - (b) a list specifying the fares for the carriage of passengers by the rail carrier from the place at which the list is kept to every other place to which bookings are commonly made; and
 - (c) a time-table of the passenger transport services operated by the rail operator.

131. Counterfeiting & reselling of tickets

(1) Counterfeiting or alterations of tickets or other certificates which are printed and used in relation to passenger and goods transport by railways is prohibited.

(2) Reselling of passenger tickets or other railway transport certificates for profit is prohibited.

(3) Military transport on railways shall be handled in accordance with relevant laws and regulations.

PART IX– ACCIDENTS, INCIDENTS AND INQUIRIES

132. Duty to notify serious railway accidents and incidents

(1) The Authority, a railway line manager, a train operator and a railway line operator whose property or staff have been involved in a serious railway accident shall notify the Minister of its occurrence immediately on learning of the occurrence through the quickest means available.

(2) A train operator and a railway line operator shall in addition notify through the quickest means available the Authority or the relevant railway line manager when its property or staff have been involved in a serious railway accident or incident.

133. Duty to notify about other railway accidents or incidents

(1) The Authority, a railway line manager, a train operator and a railway line operator whose property or staff have been involved in an accident or incident, other than a serious railway accident, shall notify the Minister of its occurrence as soon as is reasonably practicable and in any event within three working days of its occurrence.

(2) A train operator and a railway line operator shall in addition notify, as soon as is reasonably practicable and in any event within three working days of its occurrence, notify the Authority when its property or staff have been involved in an accident or incident, other than a serious railway accident.

134. Information to be provided in the notice

A notice given under sections 132 or 133 shall contain as much of the prescribed information relating to the accident or incident as the Authority, the railway line manager, the train operator or the railway line operator is reasonably able to provide at the time of the notification.

135. Medical examination of persons claiming compensation

Whenever any person claims compensation against the Authority, train operator or a railway line operator in respect of any injury alleged to be suffered by him or her as a result of the operations of the Authority, train operator or a railway line operator, a court or person having by law, or consent of the parties, authority to determine the claim may order that the person injured be examined by a medical practitioner named in the order and may also make such order with respect to the costs of the examination as may be thought.

The Rail Accident Investigation Branch

136. Establishment of rail accident investigation branch

(1) There shall be established a rail accident investigation branch within the Ministry responsible for railways.

- (2) The railway accident and incident investigation branch shall comprise of—
- (a) the chief investigator;

- (b) the deputy chief investigator; and
- (c) investigators

(3) The Minister shall appoint the chief inspector, deputy chief inspectors and inspectors of rail accidents and incidents.

(4) The chief investigator shall report to the Minister

(5) An investigator shall be a person trained in investigating rail accidents and incidents.

137. Investigations

- (1) The Branch—
 - (a) shall investigate any serious railway accident
 - (b) may investigate a non-serious railway or a railway incident; and
 - (c) shall investigate a non-serious railway accident or railway incident if required to do so by the minister.

(2) In investigating an accident or incident the Branch shall try to determine what caused the accident or incident.

(3) On completion of an investigation the Branch shall report to the Minister.

(4) In performing a function in relation to an accident or incident, the Branch shall not consider or determine blame or liability, but may determine and report on a cause of an accident or incident whether or not blame or liability is likely to be inferred from the determination or report.

(5) The Branch may conduct an investigation and report whether or not civil or criminal proceedings are in progress or may be instituted.

(6) The Chief Inspector of Rail Accidents may apply to Court for a declaration that the making of a report in connection with a specific accident or incident will not amount to a contempt of court in relation to civil or criminal proceedings which have been or may be instituted in connection with the accident or incident.

(7) The Chief Inspector of Rail accidents may reopen an investigation if he believes that significant new evidence may be available.

138. Functions of the Branch

The functions of the Branch are—

- (a) to investigate and review railway accidents and incidents,
- (b) to maintain a system for reporting of railway accidents and serious incidents;
- (c) to organise, participate and control investigations in relation to the safety of rolling stock;
- (d) to keep records of investigations and maintain an information data base for railway accidents and incidents;
- (e) to prepare and disseminate an annual analysis and a newsletter of railway events;

- (f) to analyze actions of individuals and legal entities in the rail sector and the functioning of the objects and facilities related to a specific event for purposes of ensuring safety during investigations;
- (g) to collect, analyze and disseminate data on rail safety;
- (h) to gather, record, analyze and publish relevant information of any rail accident or incident;
- (i) to issue safety recommendations where appropriate;
- (j) to determine the causes or contributing factors of accidents and incidents where possible; and
- (k) to compile accident and incident reports.

139. Powers of investigators

- (1) For the purpose of conducting a railway investigation an inspector may—
 - (a) enter any accident and incident site to investigate and inspect rail accidents and incidents;
 - (b) enter railway property
 - (c) enter land which adjoins or borders railway property
 - (d) enter a vehicle or structure which is on railway property or which is on land that adjoins railway property;
 - (e) enter land or any property if there is reasonable belief that it may contain information or evidence relating to an accident or incident;
 - (f) enter land accompanied by one or more persons authorised by the Chief Inspector of railway accidents;
 - (g) remove and retain samples and other materials for purposes of examination, analysis or preservation of evidence;
 - (h) require a person to answer questions or provide/disclose information,
 - (i) require the disclosure of the result of an examination of a person, body or thing;
 - (j) require a person to certify the truth, accuracy or authenticity of a statement made, of information or a document provided or a record disclosed.
- (2) A person commits an offence if—
 - (a) Fails to comply with a requirement imposed by an inspector of rail accidents for the purposes of an investigation under section 137.
 - (b) Makes a statement for the purpose of an investigation under section 137 knowing or suspecting that the statement is inaccurate or misleading,
 - (c) Provides information or a record for the purpose of an investigation under section 137 knowing or suspecting that the statement is inaccurate or misleading,
 - (d) Obstructs an inspector of rail accidents in the course of his conduct of an investigations under section 137.
 - (e) Obstructs are person accompanying an inspector of rail accidents
 - (f) Obstructs a person exercising a power of an inspector
- (3) A person who is found guilty of an offence under sub section (2) shall be liable on conviction to imprisonment for a term not exceeding one thousand currency points or to imprisonment not exceeding five years or both.

PART X – MISCELLANEOUS PROVISIONS

140. Service of notice

- (1) Any notice or other document required or authorized under this Act to be served on any person by the Authority or the managing director or any employee may be served—
- (a) by delivering it to that person;
 - (b) by leaving it at the usual or last known place of abode of that person; or
 - (c) by sending it by post addressed to that person at his usual or last known address.

141. Offences

- (1) Any person who unlawfully—
- (a) does any act which obstructs, or might obstruct, the working of a train or vehicle of the Authority and which endangers, or might endanger, the life of any person travelling thereon; or
 - (b) damages or in any way interferes with any train, vehicle, signal, points, rails, sleeper, lighthouse, buoy, mark, beacon or other property of the Authority in such a manner as to endanger, or as might endanger, the life of any person,
 - (c) does any act which endangers or might endanger the life of any person travelling thereon and which is not specifically provided under this act; commits an offence and liable to imprisonment for a term not exceeding ten years.
- (2) Without prejudice to the generality of subsection (1) any person who, being a member of the crew of train with prejudice to the safe operation of such train, without lawful excuse disobeys any lawful order given to him as a member of the crew, unlawfully deserts his employment upon such train shall be guilty of an offence and liable to imprisonment for a term not exceeding three years.
- (3) Any person who—
- (a) not being specifically authorized in that behalf or an employee, passenger or agent of an operator—
 - (i) Without justifiable cause is found during the hours of darkness on any premises occupied by an operator;
 - (ii) is found in any area designated by an operator as dangerous by publication of a notice to that effect; or
 - (iii) refuses to leave premises occupied by an operator, or any train or vehicle thereof after being lawfully warned to do so by any employee or police officer;
 - (b) being on any premises occupied by an operator or upon any train or vehicle of the an operator—
 - (i) refuses when called upon by an employee or police officer to give his name and address or gives a false name or address for the purpose of avoiding prosecution;
 - (ii) is in a state of intoxication or behaves in a violent; or
 - (iii) offensive manner to the annoyance of any other person;
 - (iv) discharges any firearm or does anything which may cause injury to any person on such premises or upon such train or vehicle;
 - (v) commits any nuisance or act of indecency or uses profane, obscene, indecent or abusive language;

- (vi) without lawful excuse contravenes any direction lawfully given by any employee under this Act;
- (vii) save with the express permission of the Authority hawks, sells or exposes for sale any article or touts, applies for or solicits custom of any description; or
- (viii) smokes in any part of such premises, train or vehicle bearing a notice that smoking is not permitted in that part;
- (c) writes, draws or affixes any profane, obscene, indecent or abusive word, matter, representation or character upon any premises occupied by an operator or upon any train or vehicle of an operator;
- (d) defaces the writing on any board or any notice authorized to be maintained upon any premises occupied by an operator or upon any train or vehicle of the an operator;
- (e) damages or without lawful excuse interferes with any property of an operator;
- (f) without lawful excuse does any act which obstructs, or is likely to obstruct, the free movement of train or rolling stock or therein;
- (g) without lawful excuse enters or leaves any train or vehicle of an operator while it is in motion or elsewhere than at the place appointed by an operator for passengers to enter or leave or opens any outer door of any train while it is in motion;
- (h) being a driver or conductor of any vehicle, disobeys while upon premises occupied by an operator any reasonable directions given to him in respect of such vehicle by any police officer or, not being an employee of the Authority, disobeys any such direction given by an authorized employee;
- (i) in the absence of a gate-keeper, omits to shut and fasten, if any form of fastener is provided, any gate on any railway belonging to an operator as soon as such person and any animal, vehicle or other thing under his charge has passed through the gate;
- (j) knowing, or having reason to believe, that a train is approaching, or without having exercised due care to ascertain whether a train is approaching, opens any gate, chain or bar set up on either side of a railway or drives any animal, vehicle or other thing onto or across such railway;
- (k) uses any object including electronic gadgets (such as cameras, phones or earphones) or equipment on a station or railway infrastructure that is likely to interfere with the safety of passengers;
- (l) permits or allows any animal to stay on any premises occupied by an operator and properly fenced;
- (m) fails to deliver at the earliest possible opportunity to any authorized employee any property which there is reason to believe has been lost or forgotten and is found on any premises, train or vehicle of an operator;
- (n) wilfully obstructs or impedes an employee of an operator in the discharge of his or her duties;
- (o) gives or offers to any employee any money or anything of value for the purpose of avoiding payment of any sum due to an operator;
- (p) unlawfully removes any property of an operator;
- (q) being an employee of an operator receives from any passenger or from any person delivering goods for an operator , any amount of money and—
 - (i) in the case of any amount of money received as a passenger fare, fails to issue a ticket immediately in respect of such amount of money; and

(ii) in any other case, fails within reasonable time not exceeding half an hour to issue a receipt in respect of such amount of money;

(r) without the permission of an authorized employee travels in or upon any part of a train or vehicle of an operator other than the part ordinarily provided for passengers during travel; or

(s) contravenes any direction given by a police officer under section 67 or refuses to answer any question put to him under the provisions of that section or gives in reply thereto any information which is false in a material particular,

commits an offence and liable to a fine not exceeding two million shillings or to imprisonment for a term not exceeding six months or to both.

(4) Any person who—

- (a) travels on a train or vehicle of an operator without a valid ticket or free pass with intent to avoid payment of any fare for which he is liable;
- (b) (b) having a valid ticket or free pass for a certain distance, knowingly travels on a train or vehicle of an operator beyond that distance with intent to avoid payment of the fare for the additional distance;
- (c) travels on a train or vehicle of an operator by a higher class than the valid ticket or free pass which he holds entitles him to travel with intent to avoid payment of any additional fare;
- (d) willfully refuses to pay on demand the fare and excess charge which he is liable to pay under section 119; or
- (e) travels on a train or vehicle of an operator with a ticket or free pass, or any portion thereof, purchased or obtained by him from any person other than an authorized employee, Commits an offence and shall be liable, to a fine not exceeding four hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

(5) Any person who, being a passenger on a train or vehicle of an operator:

- (a) enters any part thereof reserved for use of another person, or already containing the maximum number of persons authorized for that part, and refuses to leave that part after being required to do so by an authorized employee;
- (b) resists or obstructs the lawful entry of a person into any part thereof not already containing the maximum number of persons authorized for that part;
- (c) refuses or fails to obey the requirement of an authorized employee made under section 120
- (d) knowingly enters or refuses to leave any part thereof not intended for the use of passengers;
- (e) without reasonable cause uses or interferes with any means of communication provided thereon for communication between passengers and any employee therein; or
- (f) knowingly enters, or refuses to leave after being required so to do, any part thereof provided for the exclusive use of designated persons.
- (g) surfs on a train while in motion.

commits an offence and is liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three months or to both.

(6) Any person who—

- (a) not being an authorized employee or agent of an operator, sells or parts with any ticket or free pass, or any portion thereof, in order to enable any other person to travel therewith on a train or vehicle;

- (b) purchases or obtains any ticket or free pass, or any portion thereof, from any person other than an authorized employee or agent of an operator ; or
- (c) wilfully alters, obliterates or defaces any ticket or free pass with intent to render any material portion thereof illegible, commits an offence and is liable to a fine not exceeding seven hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

(7) Any person who—

- (a) obtains by false pretences or other fraudulent means any ticket or free pass issued by an operator;
- (b) with intent to defraud, counterfeits, forges or alters any such ticket or free pass; or
- (c) with intent to defraud, utters or in any way publishes any such forged, counterfeited or altered ticket or free pass, commits an offence and liable to imprisonment for a term not exceeding three years and shall, in addition, be liable to a penalty equal to the fare due in respect of any journey travelled by means of any such ticket or free pass together with the excess charge which on demand he is liable to pay under section 117.

(8) Any person who makes, either knowingly or recklessly, any statement which is false in any material particular in any return, claim or other document which is required or authorized to be made for the purposes of the Authority under this Act commits an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment not exceeding three months or to both.

(9) Any person who is convicted of an offence under this section shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so taken upon the train or vehicle or delivered to the Authority for carriage or warehousing; and the court which convicts such offender may order him to pay the amount of any such loss, injury or damage to the person suffering it and in default of such payment may impose a further term of imprisonment not exceeding six months.

(10) Any employee of the Authority who, while on duty, endangers the safety of any person—

- (a) by contravening any of the provisions of this Act;
- (b) by contravening any lawful order, direction or rule given to such employee or made in respect of his service;
- (c) by being under the influence of alcohol or drugs; or
- (d) by any rash or negligent act, commits an offence and liable to imprisonment for a term not exceeding three years.

(11) Any employee of the Authority, who with intent to defraud, demands, solicits or receives from any passenger, or from any person delivering goods to the Authority for carriage or warehousing or from any person making use of the facilities provided by the Authority, any greater or lesser amount than he should demand or receive, or any other thing of value, shall be guilty of an offence and liable to a fine not four hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

(12) A person who—

- (a) without lawful excuse, contravenes any lawful direction issued by any member, officer, employee or agent of the Authority in exercise of the powers or the performance of the functions of the Authority under this Act; or
- (b) wilfully obstructs any member, officer, employee or agent of the Authority in the discharge of his lawful duties, commits an offence and shall be liable, on conviction, to a fine of at least three million shillings or to imprisonment for a term not exceeding one year.

(13) Where the safe operation of any transport service of the Authority would be endangered by the immediate arrest, whether with or without a warrant, of any employee thereof, the police officer whose duty it is to make the arrest shall—

- (a) request the head of the department of the employee to relieve the employee from his duties as soon as practicable; and
- (b) refrain from arresting the employee until he is so relieved and shall, until he is so relieved, take all necessary steps to ensure that the employee does not escape.

(14) Where any request is made to a head of a department under this section, it shall be his duty to relieve the employee in respect of whom the request is made with the least possible delay.

(15) Any person who commits any offence against this Act, other than an offence mentioned in subsection (1), may be arrested without warrant by any authorized employee of the Authority or police officer if—

- (a) there is reason to believe that such person will abscond; or
- (b) he refuses on demand to give his name and address; or
- (c) there is reason to believe that the name or address given by him is incorrect, and shall thereupon, with the least possible delay, be taken before a Court of competent jurisdiction to try him or commit him for trial:

(16) Provided that, save where there is reason to believe that such person will abscond, he or she shall, if his or her true name and address are ascertained, be released on his or her executing a bond without sureties for his or her appearance before Court when required.

(17) Any person who, under this section, is arrested or required to leave any premises occupied by the Corporation or any train or vehicle thereof shall not be entitled to the return of any fare which he may have paid.

(18) Any person charged with any offence under this Act may be proceeded against, tried and punished in any place in which he may be in custody for that offence as if the offence had been committed in such place; and the offence shall for all purposes incidental to, or consequential upon, the prosecution, trial or punishment thereof be deemed to have been committed in that place:

(19) Provided that nothing herein contained shall preclude the prosecution, trial and punishment of such person in any place in which, but for the provisions of this section, such person might have been prosecuted, tried and punished.

(20) An offence committed under this Act shall be a cognizable offence.

(21) Where any penalty imposed under this section is recovered, the amount thereof shall be paid to the Authority.

(22) Nothing in this section shall prejudice the right of the Authority to recover any amounts due from the offender by any other lawful means.

142. Additional offences

(1) Any person who—

(2) Carries any dangerous article into a railway station or on board a train or has consigned for shipment any dangerous article under a name of a non-dangerous article thus likely to cause an accident, carries dynamite or detonator or who illegally carries firearms, bullets or controlled knives into a railway station or on board a train shall be guilty of an offence.

(3) Intentionally damages or destroys or causes to move or shift any railway signaling installation, or places on the railway track obstacle(s) that might lead to the overturning of a train shall be guilty of an offence.

(4) Steals spare part(s) or component(s) of a train operation facility installed on a railway line or equipment or material(s) attached to a railway line, thus endangering safe operation of the train but without causing any serious consequences, shall be guilty of an offence.

(5) A person who is guilty of an offence under this section shall be liable to life imprisonment.

(6) Where a person is convicted of an offence of damaging, injuring or removing rail material, the rail material shall be forfeited to the owner. The court may in addition to any other ruling order—

(a) such person shall pay to the railway owner, by way of compensation, a sum equal to the determined value of the rail material so damaged, injured or removed and where the value cannot be estimated, seventeen million shillings for each offence:

(b) if it is proved to the satisfaction of the court that the person so convicted is the agent or employee of another person, that other person to pay by way of compensation to the rail owner, the value of the rail material, unless after hearing that other person, the court is satisfied that the offence was not due to his negligence or default;

(c) the vehicles, tools or implements used in the commission of the offence be forfeited to the rail owner: Provided that the value of the rail material shall be either the commercial value of the railway material or the cost of restoring the damage caused to rail as a result of the offence committed, whichever is higher.

(7) A person who encroaches on railway land shall be guilty of an offence and shall be liable to a fine not exceeding seventeen million shillings or imprisonment for 3 years and in addition the infrastructure owner may demolish the structures after giving sufficient notice.

143. Regulations

(1) The Minister may, by statutory instrument, make regulations generally for giving effect to the provisions of this Act and for its due administration.

(2) Without limiting the general effect of subsection (1), the Minister may make regulations relating to—

- (a) the form of an application for a railway operating licence for the purpose of section 75;
- (b) the fee to accompany the application for a railway operating licence for the purpose of section 75 including conditions for grant of such licence, renewal, suspension or revocation;
- (c) the criteria for the appointment of the members of the board of the Authority;
- (d) the liability insurance coverage requirements for the purpose of section 75 (c);
- (e) the financial fitness requirements for the purpose of section 75(2)(d);
- (f) the professional competence requirements for the purpose of section 75(2)(e);
- (g) the fees payable by the holder of a railway operating licence or railway line operating licence for the purpose of section 75 and section 80;
- (h) the conditions and amounts by which a rail carrier may limit its liability under this Act for the purpose of section 114;
- (i) procedure by which the Authority shall certify—
 - (i) infrastructure and rolling stock;
 - (ii) personnel undertaking safety functions for railways; and
 - (iii) railway training centres, and the safety standards and requirements that must be met by the relevant applicant for the purpose of section 69;
- (j) the information to be provided in the notice given under section 132 or 133; and
- (k) the principal content of an accident and incident investigation report to be submitted to the Minister under section 134 and
- (l) Any other regulations relevant to the furtherance of this Act including safety, construction, licenses, training tariffs, fees, penalties *etc.*

144. Amendment of Schedules

(1) The Minister may, by statutory instrument, amend the Schedules to this Act.

(2) Any statutory instrument made under subsection (1) shall be laid before Parliament.

145. Repeal

The Uganda Railways Corporation Act, Cap. 331 is repealed.

SCHEDULES

Schedule 1

Sections 2 and 185(1)

CURRENCY POINT

A currency point is equivalent to twenty thousand shillings.

Schedule 2

Section 13

MEETINGS OF THE BOARD

1. Meetings of the Board

(1) The Chairperson shall convene every meeting of the Board at times and places as the Board may determine, and the Board shall meet for the discharge of business at least once in every three months.

(2) The Chairperson may, at any time, convene a special meeting of the Board and shall also call a meeting within fourteen days, if requested to do so in writing by at least five members of the Board.

(3) Notice of a Board meeting shall be given in writing to each member at least fourteen working days before the day of the meeting.

(4) The Chairperson shall preside at every meeting of the Board and in the absence of the Chairperson; the members present shall appoint a member from among themselves to preside at that meeting.

2. Quorum

(1) The quorum for a meeting of the Board is 4 members.

(2) All decisions at a meeting of the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

3. Minutes of meetings

(1) The Board shall cause to be recorded and kept, minutes of all meetings of the Board in a form approved by the Board.

(2) The minutes recorded under this paragraph shall be submitted to the Board for confirmation at its next meeting following that to which the minutes relate and when so confirmed, shall be signed by the Chairperson, in the presence of the members present at the latter meeting.

4. Power to co-opt

(1) The Board may invite any person who, in the opinion of the Board, has expert knowledge concerning the functions of the Board, to attend and take part in the proceedings of the Board.

(2) A person attending a meeting of the Board under subparagraph (1) may take part in any discussion at the meeting on which his or her advice is required but shall not have any right to vote.

5. Validity of proceedings not affected by vacancy

The validity of any proceedings of the Board shall not be affected by a vacancy in its membership or by any defect in the appointment or qualification of a member or by reason that a person not entitled, took part in its proceedings.

6. Disclosure of interest of members

(1) A member of the Board who is in any way directly or indirectly interested in a contract made or proposed to be made by the Board, or in any other matter which falls to be considered by the Board, shall disclose the nature of his or her interest at a meeting of the Board.

(2) A disclosure made under subparagraph (1) shall be recorded in the minutes of that meeting.

(3) A member who makes a disclosure under subparagraph (1) shall not— (a) be present during any deliberation of the Board with respect to that matter; or (b) take part in any decision of the Board with respect to that matter.

(4) For purposes of determining whether there is a quorum, a member withdrawing from a meeting or who is not taking part in a meeting under subparagraph (3) shall be treated as being present.

7. Board may regulate its procedure

Subject to this Act, the Board may regulate its own procedure or any other matter relating to its meetings.

Schedule 3

Section 100

SERVICES TO BE OFFERED BY THE AUTHORITY TO TRAIN OPERATORS

- 1. The minimum access package shall comprise:**
 - (a) handling of requests for infrastructure capacity;
 - (b) the right to use the capacity which is granted;
 - (c) use of running track points and junctions;
 - (d) train control including signaling, regulation, dispatching and the communication and provision of information on train movement;
 - (e) all other information required to implement or operate the service for which capacity has been granted.

- 2. Track access to services facilities and supply of services shall comprise:**
 - (a) use of electrical supply equipment for traction current, where available;
 - (b) refuelling facilities;
 - (c) passenger stations, their buildings and other facilities;
 - (d) freight terminals;
 - (e) marshalling yards;
 - (f) train formation facilities;
 - (g) storage sidings;
 - (h) maintenance and other technical facilities.

- 3. Additional services may comprise:**
 - (a) traction current;
 - (b) supply of fuel, shunting, and all other services provided at the access services facilities mentioned above;
 - (c) tailor-made contracts for:
 - (i) control of transport of dangerous goods,
 - (ii) assistance in running abnormal trains.

- 4. Ancillary services may comprise:**
 - (a) access to telecommunication network;
 - (b) provision of supplementary information;
 - (c) technical inspection of rolling stock.

Schedule 4

SAFETY MANAGEMENT SYSTEM

1. Requirements on the safety management system

The safety management system shall—

- (a) describe the distribution of responsibilities, within the operation, for the safety management system;
- (b) show how control of the safety management system by the management on different levels is secured;
- (c) show how persons carrying out work or voluntary work directly in relation to the operation and their representatives on all levels are involved with the safety management system; and
- (d) show how continuous improvement of the safety management system is ensured.

2. Basic elements of the safety management system

The basic elements of a safety management system are—

- (a) a statement of the safety policy which has been approved by the chief executive and communicated to all persons carrying out work or voluntary work directly in relation to the operation;
- (b) qualitative and quantitative targets for the maintenance and enhancement of safety and plans and procedures for reaching those targets;
- (c) in relation (i) to the national Railway network, this paragraph (c) shall provide as follows:

procedures to meet relevant technical and operational standards or other requirements as set out in—

(A) safety rules; and

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

(ii) in relation to railway lines, this paragraph (c) shall provide as follows: procedures—

(A) to meet relevant technical specifications; and

(B) relating to operations or maintenance,

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

- (d) procedures and methods for carrying out risk evaluation and implementing risk control measures when—
 - (i) there is a change in the way in which the operation in question is carried out; or

- (ii) new material is used in the operation in question, which gives rise to new risks in relation to any infrastructure or the operation being carried out;
- (e) provision of programmes for training of persons carrying out work or voluntary work directly in relation to the operation and systems to ensure that the competence of such persons is maintained and that they carry out tasks accordingly;
- (f) arrangements for the provision of sufficient information relevant to safety—
 - (i) within the operation in question; and
 - (ii) between the operator in question and any other transport operator or an applicant for a safety certificate or a safety authorisation who carries out or who intends to carry out operations on the same infrastructure;
- (g) procedures and formats for the documentation of safety information;
- (h) procedures to control the lay out of, and changes to, vital safety information;
- (i) procedures to ensure that accidents, incidents, near misses and other dangerous occurrences are reported, investigated and analyzed and that necessary preventative measures are taken;
- (j) provision of plans for action, alerts and information in the case of an emergency which are to be agreed with any public body, including the emergency services, that may be involved in such an emergency; and
- (k) provisions for recurrent internal auditing of the safety management system.

Schedule 5

Section 57

APPLICATION FOR A SAFETY CERTIFICATE

PART 1

INFORMATION TO BE INCLUDED ON A NATIONAL RAILWAY CORPORATION NETWORK APPLICATION

1. particulars of the type and extent of the operation in respect of which the application is made; and
2. either—
 - (a) a copy of a current certificate issued to the applicant by the Authority; or
 - (b) particulars of how the safety management system of the applicant meets the requirements.
3. information on the safety rules and an explanation of how compliance with these safety rules is ensured by the safety management system;
4. information on the different types of work being carried out by persons directly in relation to the operation including evidence of how the applicant ensures that when such persons are carrying out such work that they are.....
5. information on the different types of rolling stock used for the operation in question including evidence that they meet any relevant safety rules.

PART 2

INFORMATION TO BE INCLUDED FOR A RAILWAY LINE APPLICATION

6. Particulars of the type and extent of the operation in respect of which the application is made.
7. Particulars of how the safety management system of the applicant meets the requirements set out in section 55.
8. Information on the—
 - (a) relevant safety rules which are applicable to the operation; and
 - (b) technical specifications and procedures relating to operations and maintenance that are relevant to the safety of the transport system which the applicant proposes to follow, and an explanation of how compliance with these requirements is ensured by the safety management system.

9. Information on the different types of work or voluntary work being carried out by persons directly in relation to the operation including evidence of how the applicant ensures that when such persons are carrying out work or voluntary work in relation to the operation that they are doing so in accordance with relevant requirements of the relevant statutory provisions referred to in paragraph 8(a).

10. Information on the different types of rolling stock used for the operation including evidence that they meet relevant requirements of the relevant statutory provisions referred to in paragraph 8(a).

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