

**CHAPTER 70:01**  
**BOTSWANA RAILWAYS**  
ARRANGEMENT OF SECTIONS

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Act 22, 1986,  
S.I. 104, 1987,  
Act 22, 2004.

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

[Date of Commencement: 1st October, 1987]

## **PART I**

### ***Preliminary (ss 1-2)***

#### **1. Short title**

This Act may be cited as the Botswana Railways Act.

#### **2. Interpretation**

In this Act, unless the context otherwise requires-

"**contiguous railways**" means any railway outside Botswana to which traffic can travel, to and from Botswana, in the same rail vehicle;

"**financial year**" means the year ending on 31st March in each year;

"**former owners**" means the National Railways of Zimbabwe or the Railways Unitary System Board of Management so far as they relate to assets within the borders of Botswana;

"**Organization**" has the meaning assigned to it under section 3;

"**private siding**" means any line of railway which is connected to, or is contiguous with, Botswana Railways, other than such connections at the national borders, which has been constructed on land not owned or leased by Botswana Railways, for the specific purpose of facilitating rail transport access to premises or works situated on that land;

"**railway jurisdiction**" means any property of the Organization and includes any of the following which belong to the Organization, namely, buildings, offices, premises, warehouses, trains, locomotives, carriages, wagons, railway yards, railway tracks and the adjoining land;

"**railways services**" means the conveyance of passengers, parcels and goods traffic by rail or road in accordance with the provisions of this Act;

"**senior officer**" means any employee of the Organization who holds a position which is designated as such by the Board.

## **PART II**

### ***Establishment, Constitution and Membership of Organization (ss 3-7)***

#### **3. Establishment of Organization and legal personality**

(1) There is hereby established a commercial enterprise of the Government of Botswana to be known as the Botswana Railways Organization (in this Act referred to as "the Organization").

(2) Notwithstanding any other law to the contrary, all legal proceedings by or against the Organization shall be instituted by or against the Botswana Railways in its own name, and the necessary service of process shall be effected on the general manager of the Organization.

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

#### **4. Composition of Organization**

(1) There is hereby established a Board of Management (hereinafter referred to as "the Board") which shall consist of the following members appointed by the Minister-

- (a) the chairman;

- (b) the general manager of the Organization appointed under section 10, *ex officio*; and
- (c) not less than five or more than nine other persons who in the opinion of the Minister have knowledge and experience likely to contribute to the successful management of the Organization.

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

if-

- (a) he is a Member of the National Assembly;
- (b) he is an employee of the Organization;
- (c) he has been declared insolvent or bankrupt under any law in any country and has not been discharged, or has made a composition with his creditors and has not paid his debts in full; or
- (d) he or she has been convicted of an offence involving dishonesty, or commits an act of misconduct which, in the opinion of the Minister, renders him or her unfit to hold office as a member of the Board.

#### **5. Resignation and removal from office**

(1) Any member of the Board, other than the general manager, may resign from the Board by notice in writing addressed to the Minister.

(2) A member of the Board may be removed from the Board if-

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

#### **6. Tenure of office**

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

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

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

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

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

#### **7. Payment of members**

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

### **PART III**

#### ***Meetings and Proceedings of Board (ss 8-9)***

## **8. Meetings**

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

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

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

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

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

Provided that the presence of the general manager shall not count towards the constitution of the quorum.

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

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

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

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

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

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

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

## **9. Signification of documents**

All documents made by, and all decisions of, the Board may be signified under the hand of the chairman of the Board, the general manager or any member or senior officer of the Organization generally or specially authorized in that behalf.

### **PART IV**

#### ***Officers, Employees and Agents of Organization (ss 10-11)***

## **10. Appointment of officers and employees**

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

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

(3) The general manager of the Organization shall, subject to such directions on matters

of general policy as may be given by the Board, be charged with the direction of the business and administration of the Organization, and with the control of its employees.

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

(5) The general manager may delegate to any senior officer of the Organization the exercise of any powers which he is authorized to exercise under this Act.

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

(7) The appointment, dismissal and discipline of all persons to or from positions designated by the Organization as held by senior officers shall be made by the Board on consideration of recommendations of the general manager.

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

(9) The Board may-

- (a) grant pensions, gratuities or retiring allowances to any officer or employee and may require such officer or employee to contribute to any pension or contributory scheme;
- (b) for the benefit of its officers and employees, establish and make contributions to any pension or superannuation fund or medical fund; and
- (c) from time to time appoint and employ upon such terms and conditions as it may think fit such agents and contractors as it may deem necessary.

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

(11) ...

(12) Officers and employees of the Organization may become members of an appropriate trade union.

## **11. Delegation to committee**

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

## **PART V**

### ***Functions, Powers and Duties of Organization (ss 12-16)***

## **12. Functions and powers**

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

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

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

- (a) the provisions of the Companies Act, in respect of debentures, shall not apply to the

- financial instruments referred to;
- (b) the financial instruments shall, where applicable, be traded in the same markets in which similar financial instruments issued by the Government or other statutory bodies are being traded; and
- (c) where applicable, such financial instruments may be listed in the stock exchange in the same manner and subject to the same requirements and procedure as those given to financial instruments issued by the Government or other statutory bodies.

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

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

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

- (a) acquire, maintain, improve and operate the railways at present existing within Botswana or outside Botswana as may be directed by the Government from time to time;
- (b) acquire, maintain and use any kind of property, right or privilege and dispose of the same by public auction or such other method as the Board may approve, to any person;
- (c) form one or more companies or acquire shares, for the purpose of restructuring its activities, carrying on business or carrying out any purpose, which it may carry out in terms of this Act;
- (d) enter into such contracts as may be necessary for the performance of its functions and duties;
- (e) construct or cause to be constructed such works, houses, offices and other buildings and structures as it may deem necessary or expedient for the performance of its functions and duties;
- (f) purchase, take on lease or otherwise acquire or construct or cause to be constructed such tools, appliances, machinery, plant and equipment as it may deem necessary or expedient for the performance of its functions and duties;
- (g) sell, exchange, lease, dispose of, turn to account or otherwise deal with any of its assets or any part thereof; whether movable or immovable, not required for its purposes:

Provided that the Organization may not sell any of its immovable property without the approval in writing of the Minister for the time being responsible for finance;

- (h) invest from time to time, in such manner as it may deem fit, such moneys held by it as may be surplus to its immediate requirements, subject to the approval in writing of the Minister for the time being responsible for finance;
- (i) insure with any company or person against any losses, damages, risks or liabilities which the Organization may incur;
- (j) purchase or sell any materials and stores used in the performance of its functions; and
- (k) carry on any activity which is reasonably requisite or convenient for or in connection with the discharge of its functions under this Act.

### **13. Exclusive privilege of Organization**

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

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

#### **14. Co-operation with authorities**

In the discharge of its functions the Organization shall co-operate with local and other public authorities, including departments and agencies of the Government, and shall consult with local authorities in matters of concern to the Organization which affect their interests.

#### **15. Research and records**

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

#### **16. Powers of Minister to give directions**

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

### **PART VI**

#### ***Finance (ss 17-21)***

#### **17. Principles of financial operations**

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

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

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

- (a) to meet interest payments on borrowings;
- (b) to provide for repayments to be made each year in respect of loans incurred by the Organization to the extent to which such repayments exceed the year's provision for depreciation charged to revenue accounts;
- (c) to provide a reasonable proportion of the funds needed for expanding the Organization's activities and improving its services; and
- (d) to provide reserves for replacement, expansion or other purposes if and to the extent to which the Organization deems it necessary to establish such reserves.

#### **18. Fixing of tariffs and surplus funds**

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

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

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

(4) Any surplus funds of the Organization shall be invested or otherwise dealt with in

accordance with the directives given by the Minister for the time being responsible for finance.

### **19. Borrowing powers**

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

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

### **20. Vesting of property in Organization**

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

(2) The Minister may, from time to time, by order published in the *Gazette*, designate for the purposes of this section properties, assets, rights, debts, liabilities and obligations of the Government or former owners and contracts made by or on behalf of the Government or former owners which are part of; concern or relate to the railways, and as from the date specified in any such designation the properties, assets, rights, debts, liabilities and obligations and the benefit and burden of the contracts so designated shall vest in the Organization.

(3) For the purposes of subsection (4) "the appropriate date" means, in respect of any loan agreement made between the Government and any person whereby money was or is to be borrowed by the Government and used for or in connection with the railways, the date of the vesting of such loan agreement in the Organization by virtue of the foregoing provisions of this section.

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

- (a) all amounts repaid in respect of capital or interest by the Government to any person before the appropriate date under any loan agreement to which subsection (3) applies;
- (b) all amounts disbursed or to be disbursed by any Ministry or Department in repayment of any other loan raised or to be raised by any Ministry or Department and interest thereon to the extent to which such loan has been or will be applied to the railways which, before the date specified in a designation pursuant to subsection (2), had not been off-set by an amount or amounts credited to the Consolidated Fund for that purpose;
- (c) amounts equal to the outstanding debit balance of any advances made by any Ministry or Department and all costs incurred by that Ministry or Department as a result of making such advances;
- (d) any other amounts paid or to be paid by any Ministry or Department which, before the date specified in a designation pursuant to subsection (2), had not been off-set by an amount or amounts credited to the Consolidated Fund for the purpose.

(5) If, within one month from the date specified by the Minister under subsection (4) for the payment of any amount payable by the Organization to any Ministry or Department under that subsection, the Organization fails to pay such amount, it shall pay interest thereon as from

the date specified as aforesaid at such rate or rates as the Minister may, with the concurrence of the Minister for the time being responsible for finance, from time to time determine.

#### **21. Accounts and audit**

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

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

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

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

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

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

### **PART VII** **General (ss 22-31)**

#### **22. Annual report**

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

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

#### **23. Compulsory acquisition of land**

For the purposes of any written law for the time being in force relating to the compulsory acquisition of land for public purposes, the functions and operations of the Organization shall be deemed to be for public purposes.

#### **24. Resettlement measures**

If the operations of the Organization necessitate the resettlement of any person dwelling upon any communally owned land, the terms of such resettlement shall be subject to the agreement of the Government and of the local authority of the area concerned.

#### **25. Compensation for loss or damage**

(1) In the exercise of its powers under this Act in relation to the execution of works or interference with property the Organization shall cause as little detriment and inconvenience and do as little damage as possible, and shall make full compensation to all local and other authorities and other persons for all loss or damage sustained by them by reason or in

consequence of the exercise of such powers and, in default of agreement between the parties, the amount and application of such compensation shall be determined by arbitration in accordance with the provisions of the Arbitration Act.

(2) For the purpose of such arbitration the parties shall be deemed to be parties to a submission in which the reference is to two arbitrators.

## **26. Power to call for information**

The Minister may, for purposes associated with the administration of this Act, require the Board to provide him with estimates of the Organization's future revenue and expenditure, and with such other information relating to its activities and operations, including books of accounts, records, documents and agreements relating to the activities of the Organization.

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

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

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

(b) when required to-

(i) by an order of court,

(ii) under any written law, or

(iii) in the investigation of an offence.

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

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

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

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

## **27. Power to make bye-laws, etc.**

(1) The Board may make bye-laws or rules for any purpose connected with its powers, functions and duties under this Act and may impose penalties for breach of any such bye-laws or rules.

(2) Such bye-laws or rules shall come into force upon approval by the Minister.

## **28. Protection from personal liability**

No matter or thing done by any member of the Organization or by any officer or employee of the Organization shall, if the matter or thing is done *bona fide* for the purpose of executing any provision of this Act, render such person or any person acting by his direction personally liable to any action, claim or demand whatsoever.

## **29. Power to make regulations**

The Minister may, after consultation with the Board, make regulations providing for any matter which under this Act is to be provided for by regulations or which otherwise relates to the administration of the Organization.

## **30. Transitional provisions**

(1) Unless the contrary intention is indicated by the Board, every member of the staff of the Department of Railways shall be deemed to have been duly appointed under this Act.

(2) Nothing in this Act shall be taken to effect any alteration in the terms of a contract subsisting immediately before the commencement of this Act or to authorize the making of any

such alteration without the consent in writing of all parties bound by the contract.

**31. Application of certain laws**

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

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