
Railways Act 1991

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LAWS OF MALAYSIA

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Act 463

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LAWS OF MALAYSIA

Act 463

RAILWAYS ACT 1991

An Act to make new provisions in the law relating to railways and for other matters connected therewith.

[1 August 1992, P.U. (B) 401/1992]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

Short title, application and commencement

1. (1) This Act may be cited as the Railways Act 1991 and shall apply to all railways in Malaysia.

(2) This Act shall come into force on such date as the Minister may, by notification in the Gazette, appoint; and the Minister may appoint different dates for the coming into force of-- (a) different provisions of this Act; or

(b) all or different provisions of this Act in respect of different States or territories.

Interpretation

2. In this Act, unless the context otherwise requires-- "Administrator" has the same meaning as assigned to "Land Administrator" by section 5 of the National Land Code 1965 [Act 56 of 1965], "Collector" by section 4 of the Land Ordinance of Sabah [Sabah Cap. 68] or "Director" by section 2 of the Land Code of Sarawak [Sarawak. Cap. 81], as the case may be; 10 Laws of Malaysia ACT 463

"demurrage" includes charges for the detention of vehicles, vessels, plant or equipment;

"Director General" means the Director General of Railways appointed under section 3;

"fare" includes all sums received or receivable and all sums charged or chargeable for the conveyance of passengers; "Federal Lands Commissioner" means the Federal Lands Commissioner appointed under the Federal Lands Commissioner Act 1957 [Act 349];

"freight" includes all sums received or receivable and all sums charged or chargeable for the transport of goods; "goods" includes luggage and other movable property of any description and live or dead animals;

"infectious or contagious disease" means any disease declared to be infectious or contagious by regulations made under section 88;

"licence" means a licence issued under section 23; "luggage" or "passenger's luggage" means such articles of personal use and convenience as are usually carried by passengers but does not, except in the case of commercial travellers, include articles which are carried for the purpose of business, trade or profit;

"Minister" means the Minister for the time being charged with the responsibility for railways;

"property" means any movable or immovable property, and includes--

(a) any right, interest, title, claim, chose-in-action, power, privilege, whether present or future and whether vested or contingent, in relation to any property, or which is otherwise of value;

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(b) any conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property whereof the person executing the conveyance is proprietor or possessed or wherein he is entitled to a contingent right, either for his whole interest or for any less interest;

(c) any monetary instrument;

- (d) any other instrument or securities;
- (e) any business; and
- (f) any other tangible or intangible property;

"railway" means any kind of railway for the public carriage of passengers or goods or both, or any portion thereof, and includes-- (a) all rails, beams, cables, sidings, or branches worked over for the purposes of, or in connection with, a railway; (b) all rolling-stock used for the purposes of traffic; and (c) in so far as the context allows, a railway under construction by or for any railway company,

but does not include--

- (d) the Penang Hill Railway and the Sabah Railway; (e) any railway used or, in the case of a railway to be constructed, intended to be used, by any person for the carriage of goods within any premises occupied by such person; and
- (f) any railway used or, in the case of a railway to be constructed, intended to be used, wholly or mainly for the carriage of passengers within any amusement or recreational premises;

"railway company" includes any person or persons, whether incorporated or not, who are owners or lessees of a railway or parties to an agreement for working a railway;

"railway official" means any person employed by or on behalf of any railway company to perform any function in connection with a railway;

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"railway premises" means all premises under the control of or occupied or used by any railway company;

"railway reserves" means--

- (a) all lands duly reserved, whether before or after the commencement of this Act, for the purposes of the Federated Malay States Railways or the Johore State Railway or Keretapi Tanah Melayu under the

provisions of section 62 of the National Land Code 1965 or under the corresponding provisions of any

previous land law as defined in the National Land Code 1965; and

(b) all lands deemed to be railway reserves under the provisions of section 16 or 17 of the repealed Ordinance;

"railway scheme" means a scheme for the construction of a railway deposited with the Minister pursuant to section 7; "rate" includes any fare, freight, charge or other payment for the transport of any passenger or goods;

"repealed Ordinance" means the Railway Ordinance 1948 [M.U. Ord. 8 of 1948];

"rolling-stock" includes tenders, motors, coaches, wagons, trucks, trolleys, carriages of any kind and locomotive and other kinds of engine used on a railway;

"State land" has the meaning assigned thereto in the National Land Code 1965;

"the Malayan Railway" means the undertakings known as the Malayan Railway under the repealed Ordinance; and "warehouse" means any building or place provided or used by a railway company for the purpose of storing goods; and when it is more convenient to the railway company that the goods to be warehoused should remain in the trucks, those trucks when placed in a siding shall, for the purposes of this Act, be deemed to be a warehouse.

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PART II

DIRECTOR GENERAL OF RAILWAYS

Appointment of Director General

3. (1) The Minister shall, from time to time, by notification in the Gazette, appoint a public officer to be the Director General of Railways for the purpose of carrying out the duties and functions assigned to him under this Act.

(2) The Director General shall hold office for such term and subject to such conditions as the Minister may, after consultation with the Public Services Commission, determine.

(3) The Director General shall have an official seal for the authentication of documents required for the purposes of his duties and functions under this Act.

Duties and functions of Director General

4. (1) The duties and functions of the Director General shall be as follows:

(a) to regulate railway operations and railway services; (b) to prescribe the minimum safety standards for railway operations;

(c) to provide for the registration of and to prescribe the minimum qualifications for any railway official entrusted with the charge, control or operation of a railway as the Director General considers desirable;

(d) to promote the interests of users of railway facilities and services, particularly in respect of rates charged, and the standard or quality thereof; and

(e) to promote and encourage the expansion and improvement of railway systems and railway facilities and services in Malaysia.

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(2) In discharging his duties and functions under subsection (1), the Director General shall have regard to the following: (a) economy and efficiency;

(b) all reasonable demands for railway facilities and services; (c) the promotion of railway facilities and services at rates consistent with efficient service;

(d) the fostering of proper development of railway systems and railway facilities and services in Malaysia; and (e) current policies of the Government in respect of social and economic development and environmental protection. Power to delegate

5. (1) The Director General may, in writing, delegate to any public officer, subject to such conditions, limitations or restrictions as he thinks fit to impose, any of his duties or functions under this Act except the power to make regulations.

(2) Any delegation made under this section shall not prevent the Director General himself from performing the duty or exercising the function so delegated.

Power of Minister to give directions

6. The Minister may, from time to time, give to the Director General directions not inconsistent with the provisions of this Act and the Director

General shall give effect to all such directions. PART III

RAILWAY SCHEME

Railway scheme

7. (1) No railway shall be constructed within Malaysia without the approval of the Minister.

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(2) Any person intending to construct a railway within Malaysia shall make an application to and deposit with the Minister a railway scheme which shall contain the following information:

- (a) the type and system of the proposed railway;
- (b) the general routes and terminal points of the proposed railway system;
- (c) the safety aspects of the proposed railway system; (d) the proposed fare or freight structure; and
- (e) such other matters as will enable the Minister to evaluate the railway scheme.

(3) Every railway scheme deposited under subsection (2) shall be accompanied by a map showing the proposed routes for the railway.

(4) The Minister may require the applicant to submit such further or additional information as the Minister deems necessary with reference to any information contained in the railway scheme and such further or additional information shall be submitted within such period and in such manner as the Minister may require.

(5) For the avoidance of doubt, this section shall not apply to any construction work which may be carried out by a railway company for the purpose of upgrading or improving any part of the railway or railway premises operated or maintained by the railway company under the terms of its licence in so far as such work does not include an extension or diversion of the existing railway route.

Approval of railway scheme and deposit of plans, sections, etc.

8. (1) The Minister may reject or grant conditional approval to a railway

scheme.

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(2) Where the Minister grants conditional approval to the railway scheme under subsection (1), the applicant shall deposit, in the office of the Director General, for public inspection-- (a) plans and sections on a scale specified by the Director General showing the lines and levels of the proposed railway and also--

(i) any intended alteration in the water level of any canal or in the level or rate of inclination of any public road or railway which will be crossed by the proposed railway;

(ii) any intended diversion, widening or narrowing of any public road, navigable river, canal or railway; (iii) any intended laying of any part of the proposed railway along any public road; and

(iv) any intended crossing of the tracks of the proposed railway over any public road, navigable river, canal or railway; and

(b) a book of reference containing the names of the proprietors and lessees of the lands which may be required for the purposes of the proposed railway.

(3) The Director General may require the applicant to submit such further or additional information as the Director General deems necessary in respect of the plans and sections and book of reference referred to in subsection (2).

(4) The applicant shall give notice of the deposit of such plans and sections and book of reference by advertisement in at least three successive issues of at least two national newspapers, one of which shall be in the national language, calling on all persons having any objection to the plans and sections and book of reference to send in a statement of their objections in writing to the Director General within three months from the date of the last notice in the newspapers.

(5) At the expiration of the period of three months, the Director General shall present the plans and sections and book of reference referred to in subsection (2) together with any objections to it to the Minister for final approval.

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(6) The Minister may, after considering the plans and sections and book of reference and any objections thereto-- (a) give final approval to or reject

the railway scheme; or (b) where he considers that the plans and sections should be amended, direct the applicant to reconsider such plans and sections and report to him within such period as the Minister may require.

(7) In the case where paragraph (6) (b) applies, the Minister may, after considering the amendments made to the plans and sections and having regard to the objections made under subsection (4), give final approval to or reject the railway scheme. (8) The plans and sections, if approved by the Minister, whether under paragraph (6) (a) or subsection (7), shall be deemed to be deposited plans referred to in this Act.

(9) The Minister may, in approving any railway scheme, impose any requirement or condition as he considers appropriate. Railway to be constructed according to approved plans

9. (1) Any railway constructed under this Act shall be made and maintained according to the lines and levels shown on the deposited plans with all proper bridges, viaducts, stations, sidings, approaches, junctions, roads, buildings, yards, works and conveniences connected therewith and incidental thereof.

(2) A railway route may deviate from the line of railway shown on the deposited plans, but no such deviation shall extend beyond the limits of deviation shown on the plans.

Private land may be acquired for railway

10. (1) Such of the lands as are required for the purpose of constructing a railway and shown on the plans and sections and mentioned in the book of reference deposited under subsection 8(2) shall be deemed to be lands required for a public purpose within the meaning of the Land Acquisition Act 1960 [Act 486]. 18 Laws of Malaysia ACT 463

(2) Proceedings under the Land Acquisition Act 1960 shall be taken separately in respect of each land shown on the plans and sections and mentioned in the book of reference.

(3) Nothing in this section shall prevent the acquisition of lands for the purpose of constructing a railway by agreement between the railway company and the proprietors of such lands. PART IV

CONSTRUCTION AND WORKS

Power of railway company to execute all necessary works

11. (1) Subject to this Act, whenever it is necessary so to do, a railway company may, for the purpose of constructing a railway or the accommodation or other works connected therewith-- (a) make or construct in, upon, across, under or over any land or river, such temporary works or structures, including roads, bridges, rails, ways, conduits and drains, as the railway company thinks proper; and

(b) alter temporarily the course of any roads, streets or ways, as the railway company thinks proper.

(2) In exercising the powers conferred by subsection (1), the railway company shall be subject to any direction which may be given by the Director General from time to time.

(3) A railway company shall, before exercising the powers conferred by subsection (1), give notice to the proprietor or occupier of the land of his intention to enter the land.

(4) The notice mentioned in subsection (3) shall state as fully and accurately as possible the nature and extent of the acts intended to be done.

(5) The Director General may, with the approval of the Minister, make regulations for prescribing the form of the notice mentioned in subsection (3) and the manner in which such notice may be served on a proprietor or an occupier of land.

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Powers in case of accident

12. (1) The Director General may, in case of any accident happening or being apprehended to any cutting, embankment or other work under the control of a railway company, authorize that railway company to enter upon any land adjoining its railway for the purpose of carrying out repairs or preventing an accident and to do all such works as are necessary for that purpose. (2)

Notwithstanding subsection (1), a railway company may, in cases of necessity, enter upon any land for the purpose of carrying out repairs or preventing an accident without having previous authorization from the Director General, but in such a case the railway company shall, within twenty four hours after such entry, make a report to the Director General, specifying the nature of the accident or apprehended accident and of the works necessary to be done.

(3) If after considering the report the Director General is of the opinion that there is no danger or apprehended danger to the public, the railway company shall immediately cease work on such lands.

Payment of compensation

13. (1) In exercising the powers under sections 11 and 12, a railway company shall cause as little damage as possible to the lands and adequate compensation shall be paid for any damage caused by the exercise thereof.

(2) Any person claiming compensation from a railway company may lodge his claim with the Administrator who shall forward such claim to the railway company.

(3) Where there is a dispute as to the amount of compensation, the Administrator shall determine the amount, as far as may be, in accordance with the procedures prescribed by the law relating to the acquisition of land for public purposes in force in the State concerned.

(4) Nothing in this section shall prevent the settling by agreement of the amount of compensation to be paid in respect of lands damaged or injuriously affected by the exercise of the powers conferred by this section.

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Accommodation works

14. (1) Every railway company shall, subject to subsections (3) and (4), construct and maintain for the accommodation of the proprietors and occupiers of lands adjoining any railway-- (a) such and so many convenient crossings, bridges, arches, culverts and passages over, under or by the sides of or leading to or from the railway, as are in the opinion of the Director General necessary for the purpose of making good any interruptions caused to the use of the lands by the construction of a railway;

(b) all necessary arches, tunnels, culverts, drains, watercourses or other passages over or under or by the sides of the railway of such dimensions as will, in the opinion of the Director General, be sufficient at all times to convey water from or to the lands adjoining or lying near or by the railway as freely as before the construction of the railway or as nearly so as may be.

(2) Subject to this Act, the works specified in paragraphs (1) (a) and (b) shall be made during or immediately after the laying out or formation of the railway over the lands traversed by it, and in such manner as to cause as little damage, injury or inconvenience as possible to persons interested in the lands or affected by the works, as the case may be; and if there is damage or injury to the lands the railway company shall pay adequate compensation to

the persons interested therein.

(3) A railway company shall not be required--

(a) to make any accommodation works in such a manner as would prevent or obstruct the working or use of a railway; or

(b) to make any accommodation works with respect to which the proprietors and occupiers of the land have agreed to receive and have been paid compensation in consideration of their not requiring the works to be made.

(4) Where a railway company has provided suitable crossing for a road or stream, and the road or stream is afterwards diverted by the act or neglect of the person having control over such road or stream, the railway company shall not be required to provide any other crossing for the road or stream.

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Additional works

15. If-- (a) a proprietor or an occupier of any land adjoining a railway considers that the accommodation works made under section 14 are insufficient for the commodious use of the land; or

(b) any Government department or local authority desires to construct a public road or other work across, over or under a railway,

the proprietor, occupier, Government department or local authority may, at his or their own expense, cause to be made such further accommodation works as the proprietor, occupier, Government department or local authority considers necessary and if agreed to by the railway company or, in the case of a difference of opinion between the proprietor, occupier, Government department or local authority and the railway company, such further accommodation works as authorized by the Director General.

Fences, screens, gates and bars

16. (1) The Director General may, within a time to be specified in the requisition or within such further time as he may prescribe, require a railway company--

(a) to provide or renew, as the case may be, fences or boundary marks for its railway and any road constructed in connection therewith; or

(b) to provide or renew, as the case may be, any works in the nature of a

screen near to or adjoining the side of any public road constructed before the making of the railway for the purpose of preventing danger to the public using the road.

(2) Any railway company which fails to comply with any requisition made under this section shall be guilty of an offence.

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Graded crossings

17. Where a railway company has constructed a railway track across an existing public road on the level, the Director General may, if it appears to him necessary for public safety and convenience, at any time, require the railway company, within such time as he thinks fit, to carry the road either under or over the railway track by means of a bridge or arch with convenient ascents and descents and other convenient approaches instead of crossing the road on the level, or to execute such other works as in the circumstances of the case appear to the Director General to be best adapted for removing or diminishing the danger arising from the level crossing and for meeting the convenience of the public.

Road crossings

18. (1) Wherever a railway company has constructed a railway track across an existing public road on the level (such crossing not being an "occupation crossing" within the meaning of section 20), the company shall cause good and efficient gates or barriers to be erected and maintained at the point where the railway track crosses the road, and shall employ proper persons to open and shut such gates or barriers and such gates or barriers shall be kept closed against the public road when rolling-stock is crossing the road. (2) The Director General may, at any time, declare that subsection (1) shall not apply to such crossings as are specified in the declaration, and thereupon the railway company shall be relieved of the obligations imposed by subsection (1) in respect of the said crossings. (3) Where any such declaration has been made under subsection (2), the railway company shall erect warning boards alongside the public road and whistle-signals alongside the railway track at suitable distances from such level crossing, and the driver of every engine or other motive vehicle shall sound the whistle of his engine or other motive vehicle in accordance with such signals before the engine or other motive vehicle crosses the public road. (4) The railway company shall not be liable for any damage caused to any person or property by the passage of any engine, other motive vehicle or any other rolling-stock attached to it across the public road at any crossing specified in a declaration under 23Railways

subsection (2) unless it is proved that the driver of the engine, motive vehicle or rolling-stock did not sound the whistle of his engine, motive vehicle or rolling-stock in accordance with the signals.

(5) Where a Government department, local authority or any other person constructs a public road across an existing railway track, the Government department, local authority or any other person charged with the responsibility for the maintenance of such road shall be liable to pay to the railway company the cost of the construction of any gate or barrier erected by the company at the point where the road crosses the railway track and an annual rent for the maintenance thereof.

Private crossings

19. (1) A railway company may, at its discretion, on a request made by any person, construct and open private crossings at any place on a railway track, and may impose conditions regarding the use thereof.

(2) The cost of the construction of a private crossing and an annual rent for the maintenance of it shall be paid by the person for whom such crossing has been constructed.

(3) The railway company may, in the event of failure by the person for whom such crossing has been constructed to comply with the conditions imposed, or if it is expedient so to do in the interests of the railway, close any private crossing.

20. (1) The Director General may, at any time, by notification in the Gazette declare any road or path which a railway track crosses to be an "occupation crossing".

(2) When any such declaration has been made, the railway company shall provide, at such occupation crossing, gates or barriers across the road or path, which shall not be capable of closing across the railway track, and which shall be kept locked when not in use. The keys of such gates or barriers shall be kept by a railway official.

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(3) Notwithstanding subsection (2), duplicates of the keys of the gates or barriers of any occupation crossing may be entrusted by the railway company to any person having frequent occasion to use such occupation crossing and such keys shall be retained and used by that person for such period and subject to such conditions as the railway company may determine.

(4) The railway company may, from time to time, define the hours suitable for the opening of the gates and barriers of any occupation crossing, and the gates or barriers shall only be opened by the railway official with whom the keys of such gates or barriers are kept at the times so defined by the railway company. (5) Any person, not being a person to whom the keys of the gates or barriers are entrusted under subsection (3), who intends to use an occupation crossing outside the hours defined under subsection (4), shall give to the railway official with whom the keys of the gates and barriers are kept, notice of his intention to do so.

Removal of trees dangerous to or obstructing the working of a railway

21. (1) Where in the opinion of the Director General there is at any time danger or suspected danger that any tree (which term in this section includes undergrowth) standing on land other than railway land may fall on to a railway, or on the route of any telegraph, telephone, signal, electric light or electric power wire the working of which is wholly or partially controlled by a railway company or may obstruct, interfere with, or cause damage to the construction or proper working of a railway or of any such telegraph, telephone, signal, electric light or electric power wire or to any post, other structure or fitting supporting the same or appurtenant thereto, a railway company may cause the tree to be cut down or dealt with in such other manner as will, in the opinion of the Director General, avert the danger or remove the obstruction, as the case may be.

(2) Where a tree obstructs or interferes with the view of any fixed signal, a railway company may cause the tree to be cut down or dealt with in such other manner as will remove the obstruction or interference, as the case may be.

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(3) When the tree referred to in subsections (1) and (2) was in existence before the railway was constructed, or the telegraph, telephone, signal, electric light or electric power wire was laid, or the post, structure or fitting was erected or installed, or the signal was fixed, adequate compensation shall be paid by the railway company to the proprietor or occupier of the land the tree is on. Notice of felling or clearing of trees or jungle adjacent to railway

22. (1) The proprietor or occupier of any land shall, before felling or clearing any tree or jungle adjacent to a railway, give seven days' previous notice in writing to the railway company of his intention to do so and shall take all reasonable precautions for the protection of the railway or any telegraph or telephone erected thereon.

(2) Where any damage is caused to the railway or any telegraph or telephone erected thereon, the railway company may, in default of agreement, recover compensation from the proprietor or occupier by action at law.

PART V

LICENSING OF RAILWAY COMPANY

AND OPENING OF RAILWAY

Licence to operate a railway

23. (1) Except pursuant to an order made under section 80, no person shall operate any railway except under a licence issued by the Minister under this section.

(2) Any application for the grant of a licence under this section shall be made in writing, and shall contain, or be accompanied by, such information and documents as may be specified by the Director General.

(3) Upon receiving an application made under subsection (2), the Minister may—

(a) approve the application and issue a licence to the applicant on payment of such fees as he thinks fit; or

(b) refuse the application.

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(4) Notwithstanding subsection (3), where a railway scheme has been approved by the Minister under subsection 8(7), the railway company which submitted the railway scheme shall, subject to any condition or requirement imposed by the Minister on such approval, be deemed to be a qualified and suitable applicant for the purpose of operating the railway approved under the railway scheme and the Minister shall, on an application by the railway company under subsection (2), approve the application and issue a licence to the railway company on payment of such fees as he thinks fit.

(5) Every licence issued under subsection (3) or (4) shall set out the duration of the licence and shall further prescribe— (a) the type of railway system and services to be operated by a railway company;

(b) the annual licence fee payable by a railway company; (c) particular duties

of a railway company in respect of the railway services operated or facilities provided by it; and (d) such other matters or conditions as the Minister thinks fit.

(6) The issue of a licence to a railway company by the Minister under subsection (3) or (4) shall not impose any liability on the Government for any loss or damage occasioned by any act, omission or default of such company.

Notice of intended opening of a railway

24. (1) Subject to subsection (2), a railway company shall, at least one month before the intended date of opening of a railway, give to the Director General notice in writing of its intention to open the railway.

(2) The Director General may, if he thinks it fit or on the application of a railway company, reduce the period of or dispense with the notice mentioned in subsection (1).

Minister to approve opening of railway

25. (1) No railway shall be opened without the Minister's approval. 27Railways

(2) The Minister shall only give his approval to the opening of a railway after he has received a written report from an engineer appointed by the Director General that--

(a) he has made a careful inspection of the railway; (b) the weight of rails, strength of bridges, general structural character of the works, and the size of and maximum gross load upon the axles of any rolling-stock are such as have been prescribed by any regulations made under this Act; and

(c) in his opinion the opening of the railway will not cause any danger to the passengers or any damage to the goods to be carried thereon.

(3) This section shall apply mutatis mutandis--

(a) to any addition forming part of or directly connected to a railway constructed after the inspection which preceded the first opening of the railway; and

(b) to any reconstruction materially affecting the structural character of any railway.

Inspection

26. After a railway has been opened, the railway shall be inspected by an engineer, to be appointed by the Director General, in such manner and at such intervals as may be prescribed by any regulations made under this Act.

Power to close railway when opened

27. (1) If after inspection of a railway the engineer is of the opinion that the use of the railway will cause danger to the public or damage to the goods carried thereon, he shall inform the Director General of his opinion together with the grounds thereof. (2) The Director General may thereupon order the railway to be closed, or in the case of a rolling-stock, order the rolling-stock to be discontinued from use or the railway be used only on such conditions as the Director General considers necessary for the safety of the public or goods carried thereon.

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Reopening of railway after closure

28. (1) A railway which has been ordered to be closed shall not be opened until it has been inspected by an engineer appointed by the Director General and its reopening has been approved by the Minister.

(2) A rolling-stock which has been ordered to be discontinued from use under section 27 shall not be used until it has been certified to be fit for use by an engineer appointed by the Director General after inspection and the Director General has approved its use.

Reopening of track after temporary suspension

29. When an accident has occurred, resulting in a temporary suspension of traffic, and either the original track and works have been rapidly restored to their original standard or a temporary diversion has been laid for the purpose of restoring communication, the original track and works so restored may be reopened or the temporary diversion opened, as the case may be, subject to the following conditions:

(a) that the railway official in charge of the works undertaken by reason of the accident has certified in writing that the reopening of the restored track and works or the opening of the temporary diversion will not, in his opinion, cause any danger to the public or any damage to the goods carried thereon; and

(b) that written notice of the reopening of the track and works or the opening of the diversion shall have been sent to the Director General.

General penalty for failure to comply with Part V

30. Any railway company which acts in contravention of this Part shall be guilty of an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both.

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PART VI

DUTIES OF RAILWAY COMPANIES

Duties of a railway company

31. It shall be the duty of every railway company-- (a) to provide railway services and facilities specified in its licence to such extent as is necessary for the railway company to meet any standard of performance determined by the Director General under this Act; and

(b) to develop and maintain an efficient railway system. Standards of performance

32. (1) The Director General may, with the approval of the Minister, by regulations, prescribe such standards of performance in connection with the provision of railway services and facilities as, in his opinion, ought to be achieved by a railway company. (2) Without prejudice to the generality of subsection (1), regulations made under that subsection may--

(a) make provisions for procedures to be followed for the enforcement of the standards prescribed; and

(b) prescribe circumstances in which a railway company may be exempted from the requirements of the regulations. Submission of reports, accounts, etc.

33. (1) Within three months after the end of each financial year of a railway company or such longer period as the Director General may allow, the directors of the railway company shall deliver to the Director General--

(a) a report of its operation during that financial year containing such information as is necessary to enable the Director General to assess the railway company; and

(b) its audited annual balance sheet, profit and loss account, together with

any notice thereon, and the reports of its auditor and directors.

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(2) The report required by paragraph (1) (a) shall be in such form as may be approved by the Director General.

Submission of information

34. The Director General may, from time to time, require a railway company to submit to him--

(a) such statistical information relating to the operation of the railway company;

(b) its passengers or goods forecast, as the case may be, over such period and in such form as may be determined by the Director General; and

(c) future development plans relating to any service or facility which the company is bound to provide under the conditions of the licence.

Submission of further information

35. (1) The Director General may require a railway company to submit such further or additional information as he may deem necessary with reference to any report, accounts or information forwarded by that company under section 33 or 34 and that information shall be submitted within such period and in such manner as the Director General may require.

(2) A railway company which fails to comply with this section or with section 33 or 34 shall pay to the Government a sum of one hundred ringgit for every day during which the default continues after the thirtieth day from the date the company is required to submit the report or information.

Director General to be informed of any change in control of company, etc.

36. (1) It shall be the duty of every railway company, at all times, to inform the Director General immediately of the following matters: (a) any change in the control of the railway company; (b) any industrial dispute between the railway company and its employees;

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(c) any fire occurrence within its premises;

(d) any proceedings or claim instituted or made against the railway company which might have an adverse effect on its financial condition or on its ability to perform any condition under the licence.

(2) For the purposes of paragraph (1) (a), the expression "control" in relation to a railway company, means having the power, directly or indirectly, to direct the management and policy of the railway company.

(3) A railway company which fails to comply with this section shall be guilty of an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit.

PART VII

POWERS OF RAILWAY COMPANIES

Time-tables and lists of fares to be posted up at stations

37. Every railway company shall keep, at every railway station, a copy of the time-tables for the time being in force on the railway, and a list of the general fares chargeable for travelling from the station where the lists are posted to every place for which tickets are ordinarily issued to passengers at that station, and shall allow all persons to inspect it free of charge at all reasonable hours. Fares to be prepaid and passengers' tickets to be delivered up on demand

38. (1) No person shall travel on a railway without first having paid his fare and obtaining a ticket.

(2) Every person intending to travel on a railway shall, upon payment of his fare, be furnished with a ticket specifying the class of coach or accommodation for, and the station or place from, and the station or place to, which the fare has been paid, and shall, when required to do so, show his ticket to any railway official duly authorized to examine the ticket, and shall deliver up the ticket upon demand to any railway official duly authorized to collect tickets.

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(3) Any person travelling without a ticket or not producing or delivering up his ticket as aforesaid shall be liable to pay to the railway company--

(a) the fare for the distance travelled or, where there is any doubt as to the station or place from which he started, the fare from the station or place

from which the railway originally started; and

(b) a special charge as prescribed under any regulations made under this Act.

(4) Such fare and special charge shall be paid on demand to any railway official duly authorized to collect tickets, and if not so paid, payment thereof may be recovered by the railway company by action at law.

Lien for fares, rates and other charges

39. (1) If, on demand made by or on behalf of a railway company, any person fails to pay any sum due to or recoverable by the railway company from him in respect of any goods, whether such sum is due for the conveyance, handling, storage, demurrage, or other charges, or in repayment of any sum disbursed by the railway company or any other sum howsoever arising, the railway company may detain the whole or any of the goods or, if such goods have been removed from the railway premises, any other goods of such person then being in or thereafter coming into the possession of the railway company.

(2) When any goods have been detained under subsection (1) the railway company may--

(a) in the case of perishable goods, sell the same at once by public auction or private agreement as it may deem expedient; and

(b) in the case of other goods, sell by public auction, on the expiration of at least fourteen days' notice of the intended auction published in one or more of the local newspapers, such quantity of the goods as will be sufficient to recover the sum due to or recoverable by the railway company together with all expenses of such detention, notice and sale, including, in the case of animals, the expenses of the feeding, watering and tending thereof.

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(3) The railway company may, out of the proceeds of the sale, retain the amount of the sum and expenses due to or recoverable by the railway company, rendering the surplus, if any, of the proceeds and such of the goods as remain unsold to the person entitled thereto.

(4) If the person entitled thereto fails to remove from the railway premises, within a reasonable time, any of the goods which have remained unsold, the railway company may sell the whole of such goods and shall, after deducting the expenses of the further detention and sale of such goods, render the surplus of the proceeds to the person entitled thereto.

(5) The person entitled to remove the goods shall not do so unless he tenders to the railway company a sum equal to the costs, charges and expenses of the further detention of such goods from the date of the sale under subsection (2) to the date of removal. (6) Notwithstanding anything in this section, the railway company may recover by suit or action any such sum as is referred to in subsection (1).

Disposal of unclaimed goods

40. (1) When any goods have come into the possession of a railway company for transport or otherwise, and are not claimed by the owner or other person appearing to the railway company to be entitled thereto, the railway company shall, if such owner or person is known, cause a notice to be served upon him requiring him to remove the goods.

(2) If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the notice, the railway company may, after a reasonable time, sell the goods as nearly as may be in accordance with section 39 and render the surplus, if any, of the proceeds of the sale to any person entitled thereto.

Requisition for written declaration of description of goods

41. (1) The owner or person having charge of any goods which are delivered to a railway company for the purpose of being transported, and the consignee of any goods which have been 34 Laws of Malaysia ACT 463

transported, shall, on the request of any railway official authorized in that behalf by the railway company, deliver to such official a declaration in writing signed by such owner or person, or by such consignee, as the case may be, containing such a description of the goods as may be sufficient to determine the rate which the railway company is entitled to charge in respect thereof. (2) If such owner, person, or consignee refuses or neglects to give such a declaration or refuses to open the package containing the goods in order that their description may be ascertained, the railway company may--

(a) in respect of goods which have been brought for the purpose of being transported, refuse to carry the goods unless a rate is paid in respect thereof not exceeding the highest rate which may be in force at the time on the railway for any class of goods; or

(b) in respect of goods which have been transported, charge a rate not exceeding such highest rate.

(3) If a declaration delivered under subsection (1) is materially false with respect to the description of any goods to which it purports to relate, and which have been transported, the railway company may charge, in respect of the transportation of the goods, a rate not exceeding double the highest rate which may be in force at the time on the railway for any class of goods. (4) If any difference arises between a railway official and the owner or person having charge, or the consignee, of any goods which have been delivered for transport, or have been transported, with respect to the description of goods the subject of a declaration under this section, the railway official may detain and examine the goods.

(5) If it appears from the examination that the description of the goods is different from that stated in the declaration delivered under subsection (1), the person who delivered the declaration, if that person is not the owner of the goods, then that person and the owner jointly and severally, shall be liable to pay to the railway company the cost of the detention and examination of the goods, and the railway company shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination thereof.

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(6) If it appears that the description of the goods is not different from that stated in the declaration delivered under subsection (1), the railway company shall pay the cost of the detention and examination, and be responsible to the owner of the goods for any such loss as mentioned above.

(7) Any person adversely affected by subsection (3) or (5) may, unless he has previously admitted his liability, within seven days of the making of a claim by or on behalf of the railway company under any of the preceding subsections, require, by written notice, the railway company to recover such claim by suit or action, and until the termination of such suit or action, the right of the railway company to recover such claim by sale and retention of the proceeds thereof in the manner prescribed under this section shall be suspended.

Dangerous or offensive goods

42. (1) No person shall bring or cause to be brought onto a railway or require a railway company to transport or hold any dangerous or offensive goods upon the railway except in accordance with regulations made under this Act.

(2) Nothing in this section or in any regulations made under this Act shall be construed as to derogate from any written law in force relating to the possession or transport of dangerous or offensive goods.

Traffic facilities

43. Every railway company shall afford all reasonable facilities for the receiving, forwarding and delivery of traffic on the railway. Railway company not a common carrier

44. Notwithstanding any other written law, a railway company shall not be deemed to be a common carrier or to be subject to any law relating to common carriers.

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PART VIII

ACCIDENTS

Notice of accident to be given

45. (1) Whenever an accident occurs upon a railway-- (a) the railway officer in charge of a station nearest to the place at which the accident occurs shall, without unnecessary delay but in any case not later than

twenty-four hours after the occurrence of the accident, give notice of the accident in writing or by any form of telecommunication to the officer in charge of the nearest police station; and

(b) the railway company shall, without unnecessary delay but in any case not later than twenty-four hours after the occurrence of the accident, send written notice of the accident to the Director General.

(2) The notice shall contain a brief statement of the nature of the accident and of the extent of the injuries or damage caused. Inquiry

46. (1) As soon as possible after the occurrence of an accident, the railway company shall cause an inquiry to be made by a committee of railway officials to investigate the cause of the accident but in cases where there is no reasonable doubt as to the cause of the accident or the railway company accepts all responsibility, it shall not be necessary to hold such inquiry.

(2) The railway company shall submit to the Director General a report on the accident and such report shall state what action the company proposes to take with regard to the officials responsible for the accident or for the revision of the rules or system of working and, if an inquiry has been held under subsection (1), a report on the inquiry.

(3) The Director General may, if he is not satisfied with the report submitted to him under subsection (2), and with the approval of the Minister, form a committee of investigation to inquire into the cause of the accident.

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(4) For the purposes of such inquiry, the committee of investigation may summon any person to attend any meeting of the said committee to give evidence on oath or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession related to the matters which are the subject matter of such inquiry. (5) Any person who, under subsection (4)—

(a) having been summoned to attend any such inquiry, fails to do so;

(b) offers any act of disrespect or any insult or threat to the committee or any member thereof during an inquiry; or (c) having been required by the committee to give evidence on oath or to produce a document or other thing, refuses to do so or gives false evidence or produces a document or any other thing which he knows to be false,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(6) The committee of investigation shall, on completion of the inquiry, submit its report to the Director General and such report shall state the opinion of the committee as to the cause of the accident and the full particulars of the case.

Minister may order inquiry

47. (1) The Minister may order that an inquiry into the cause of any accident upon a railway be made by any person designated in such order.

(2) Any person so appointed shall have and may exercise, for the purposes of such inquiry, all the statutory and other powers as are for the time being vested in and exercisable by a magistrate for summoning and enforcing the attendance of witnesses, for administering oaths or affirmations to such witnesses and for compelling such witnesses to answer all reasonable and proper question related to the matters which are the subject of such inquiry.

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(3) The person holding such inquiry shall submit to the Minister a copy of the proceedings and report his opinion as to the cause of the accident together with full particulars of the case. Meaning of "accident"

48. For the purpose of sections 45, 46 and 47, "accident" means an accident attended by loss of human life or grievous hurt to any passenger upon any train or to any person engaged in the working of the railway or by serious damage to property or an accident of such a description as is usually attended by such loss, hurt or damage.

Power to make regulations relating to notices of accident, etc.

49. The Director General may, with the approval of the Minister, make regulations relating to--

(a) the forms of the notices mentioned in section 45, and the particulars of the accident which those notices are to contain;

(b) the class of accidents in respect of which notice is to be sent by any form of telecommunication immediately after the accident has occurred;

(c) the duties of railway officials or police officers on the occurrence of an accident; and

(d) the procedures of any inquiry into an accident. Submission of return of accidents

50. Every railway company shall send to the Director General a return of accidents occurring upon its railway, whether attended with personal injury or not, in such form and manner and at such intervals or time as the Director General directs. Penalty for failure to comply with section 45

51. (1) Any railway company which fails to give notice of an accident as is required by section 45 shall pay to the Government a sum of one hundred ringgit for every day during which the default continues.

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(2) Any railway official in charge of a station who omits to give such notice of an accident as is required by section 45 shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding one month or to both.

Penalty for failure to comply with section 50

52. Any railway company which fails to comply with section 50 shall pay to the Government a sum of fifty ringgit for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the returns. Compulsory medical examination of persons injured in railway accident

53. Whenever any person injured by an accident on a railway claims compensation on account of the injury, any court having jurisdiction over such matter may order that the person injured be examined by a duly qualified medical practitioner who is not a witness on either side, and may make such order with respect to the costs of the examination as it thinks fit.

PART IX

OFFENCES AND PENALTIES

Intoxication or breach of duty

54. Any railway official who— (a) is in a state of intoxication while discharging any duty; or

(b) refuses or neglects to perform his duty or performs the same in an improper manner,

shall, if the duty is such that the intoxication or refusal, neglect or improper performance of the duty, as the case may be, is likely to endanger the safety of any person or goods carried upon the railway, be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or to both.

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Unlawfully bringing dangerous or offensive goods upon railway

55. If, in contravention of section 42, any person takes or causes to be taken or deposited any dangerous or offensive goods upon a railway, or tenders or delivers or deposits any such goods for transport upon a railway, such person shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Entering or leaving railway coach, etc., while coach in motion, or travelling irregularly

56. Any passenger who gets into or upon, or attempts to get into or upon, or quits or attempts to quit any railway coach while such coach is in motion, or who travels or attempts to travel on or in any part of a coach not intended for the use of passengers, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit for each offence. Entering or leaving railway coach irregularly

57. Any person who-- (a) at any time enters or leaves or attempts to enter or leave any railway coach otherwise than by the door provided for the purpose on the side of the coach adjacent to the platform or other similar place appointed by the railway company as a place for persons to enter or leave a railway coach; or

(b) opens any outer door of any such coach while it is in motion,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit.

Resisting entry, and entering and refusing to leave full train

58. Any passenger who-- (a) resists the lawful entry of another passenger into a railway coach or portion of a railway coach not reserved by the railway company for the use of the passenger resisting; 41Railways

(b) after having been refused admission onto a train by a railway official, on account of the train being full, nevertheless persists in entering or attempting to enter the train; or

(c) having gone on board a train at any place and having been requested by a railway official, on account of the train being full, to leave the train before it has quitted that place, does not comply with that request,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit and, in addition, may be removed from the train by any railway official. Penalty for disorderly or offensive behaviour or nuisance

59. Any person who-- (a) behaves in a disorderly or offensive manner or commits any nuisance on a railway coach or upon any railway premises; or

(b) assaults, hinders or obstructs a railway official in the execution of his duties,

shall be guilty of an offence and shall on conviction be liable to a fine not

exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both and in addition, the offender may be removed by any railway official from any such coach or railway premises and shall, if he is a passenger, forfeit his fare.

Penalty for improper use of emergency signal apparatus

60. Any person who makes improper use of the emergency signal apparatus provided by a railway company in any coach or on any train for the use of passengers to stop a train in case of emergency shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both.

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Penalty for removing, etc., stakes, pegs or other marks

61. Any person who removes, defaces or in any way interferes with any stakes, pegs or other marks placed by or for the purposes of a railway company along a railway track or contiguous thereto shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both.

Penalty for trespass

62. Any person who trespasses upon a railway or upon any railway premises shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five hundred ringgit and, if any such person refuses to leave the railway or railway premises on being requested to do so by any railway official, he shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit, and may be immediately removed therefrom. Penalty for driving any vehicle or animal upon or across a railway

63. Any person who wilfully rides, leads, or drives upon or across a railway track any vehicle or animal, except when directly crossing the railway track at any road or place appointed for that purpose at a time at which he may lawfully do so, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five hundred ringgit for each offence.

Penalty for damage, whether wilful or negligent

64. (1) Any person who-- (a) wilfully or negligently damages any railway or any property belonging to a railway company;

(b) removes sand, stone, earth or any other matter or thing from banks,

bridges, culverts, retaining walls or the railway track belonging to a railway company; or

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(c) fells timber in a manner likely to endanger the safety of passing trains or of any person in or upon such trains, or to cause damage to the railway track,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(2) Any person who ties up the wires of wire fencing, breaks down or destroys any fencing or hedges, or does or causes to be done any act that damages or is likely to damage any fence or hedge appertaining to a railway shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both.

(3) Any person who, wilfully or negligently, diverts any stream or drain or, by any means, causes water to flow on to a railway or, causes damage to a railway in any manner by water, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(4) Any person who, having any contract for the supply to a railway company of bricks, ballast, timber, fuel, or any other material, or being employed in connection with the supply to the railway company of such material, negligently places or stacks the said material in an unsafe or careless manner, or at less than the prescribed distance from the rails, so that the safety of passing trains or of any person in or upon such trains is endangered shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Opening or not properly shutting gates

65. If-- (a) any person opens or attempts to open any gate set up on either side of any railway track across a road, or passes or attempts to pass, or drives or takes or attempts to drive or take, any vehicle, animal or other thing across the railway tracks; or

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(b) in the absence of a gate-keeper, any person omits to shut and fasten and, where necessary, to lock such a gate as aforesaid as soon as he and any vehicle, animal or other thing under his charge has passed through the gate, he shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both. Maliciously obstructing or attempting to obstruct a railway

66. If any person unlawfully-- (a) puts, throws or causes to fall against, upon or across a railway any wood, stone or other matter or thing; (b) takes up, removes, loosens, or displaces any rail, sleeper or other matter or thing appertaining to a railway; (c) turns, moves, unlocks or diverts any railway points or other machinery appertaining to a railway;

(d) moves any part of the rolling-stock on a railway track or leaves the same on any part of a railway track;

(e) makes, shows, hides or removes any signal or light upon or near a railway; or

(f) does or causes to be done or attempts to do any other act or thing in relation to a railway,

with intent, or with the knowledge that he is likely, to obstruct the working of the railway, or to endanger the safety of any person travelling or being upon the railway, he shall be guilty of an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding twenty years.

Maliciously hurting or attempting to hurt persons travelling by train

67. If any person unlawfully throws or causes to fall or strike at, against, into, or upon any rolling-stock forming part of a train any wood, stone or other matter or thing with intent, or with the knowledge that he is likely, to endanger the safety of any person being in or upon such rolling-stock or in or upon any other rolling-stock forming part of the same train, he shall be guilty of an offence and shall on conviction be liable to a fine not exceeding twenty-five thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

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Penalty for causing train to stop

68. If any person not being a railway official, without reasonable excuse, by making any gesture or exhibiting any signal or otherwise, causes a moving train to be brought to a standstill, he shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both.

Penalty for wilful act or omission endangering passenger

69. Whoever wilfully does any act, or wilfully omits to do what he is legally bound to do, intending by such act or omission to cause or knowing that he is thereby likely to cause the safety of any person travelling or being upon a railway to be endangered, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding seven years or to both.

Penalty for negligent act

70. Any person who rashly or negligently, and without lawful excuse, does any act which is likely to endanger his own safety or that of any person travelling or being upon a railway, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Making false statements, etc.

71. Any person who, in furnishing any information or making any application under or for the purposes of any provision of this Act, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding thirty thousand ringgit.

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Penalty for breach of Act or regulations for which no special penalty is provided

72. Any person who contravenes or fails to comply with any of the provisions of this Act or of any regulations made thereunder shall be guilty of an offence and shall, if no other penalty is provided, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding three months or to both.

Legal duties of railway officials

73. Every railway official shall be legally bound to do everything necessary for or conducive to the safety of the public, and every such official shall be legally prohibited from doing any act which is likely to cause danger.

Apprehension of offenders

74. Any person found committing or attempting to commit an offence against this Act or any regulations made thereunder may be arrested, without warrant, by any railway official or by any police officer or by any other person whom such official or police officer may call to his aid, and every person so arrested shall, with all convenient despatch, be taken to the nearest police station to be dealt with according to law:

Provided that a railway official shall not effect any such arrest outside the railway premises.

Recovery of fares, charges or damages

75. (1) When any person is convicted before a court of criminal jurisdiction for an offence against any of the provisions of this Act or any regulations made thereunder, the court may, in addition to imposing any penalty under this Act, fix or assess the amount of any fare, charge, damages, expenses or sum of money whatsoever which may have become payable by such person to the railway company, and order such amount to be paid by such person to the railway company.

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(2) Nothing in subsection (1) shall prevent the recovery of any fare, charge, damages, expenses or other sum of money whatsoever which may have become payable by any person to a railway company by way of a civil claim before a court of civil jurisdiction. Offence by bodies corporate

76. (1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the

body corporate.

Compounding of offences

77. (1) The Director General or any officer authorized by him may compound any such offence against this Act or any regulations made thereunder as may be prescribed as an offence which may be compounded by the Director General or any officer authorized by him by collecting from any person reasonably suspected of having committed the same a sum of money not exceeding three hundred ringgit.

(2) The Director General may, with the approval of the Minister, make regulations to prescribe the offences which may be compounded and the method and procedures therefor.

Prosecution

78. It shall be competent for the Director General or any officer authorized by him to conduct a prosecution for any offence under this Act or any regulations made thereunder before any court. 48 Laws of Malaysia ACT 463

PART X

SUSPENSION OR REVOCATION OF LICENCE

Suspension or revocation of licence

79. (1) Where the Director General is satisfied that a railway company is contravening, or has contravened and is likely again to contravene, any of the conditions of its licence, the Director General may give notice in writing to the railway company requiring it to comply with that condition within the period prescribed in the notice.

(2) If on the expiry of the period prescribed in such notice the railway company fails to comply with the condition mentioned therein, the Director General shall submit to the Minister a report of such failure by the railway company and the report shall be in such form as the Director General considers appropriate. (3) Where, after considering the report from the Director General, the Minister is satisfied that the contraventions were, or the apprehended contraventions are, of a serious nature or affected or likely to affect the public interest or safety, and that the railway company has refused to take or has not taken all such steps as appear necessary to the Minister for the purpose of securing compliance with the condition in question, the Minister may give to the railway company notice stating that he proposes to suspend or revoke, as the case may be, its licence and such notice shall also

set out or specify--

(a) the condition of the licence which the company has contravened and the acts or omissions which constitute such contravention; and

(b) the period (not being less than thirty days from the date of the notice) within which the railway company may make representations with respect to the proposed suspension or revocation, as the case may be.

(4) After the expiry of the period specified in the notice and considering any representations made by the railway company, the Minister shall decide whether to proceed with the proposed action or to take no further action.

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(5) A notice shall be given by the Minister to the railway company of his decision and the decision shall take effect from the date on which the said notice is served on the company.

(6) The decision of the Minister under this section shall be final and conclusive.

Action by Minister in certain circumstances

80. (1) Where a licence has been suspended or revoked under section 79 and the Minister is satisfied that it is in the public interest for any of the services or facilities provided by the railway company to be continued, he may by order published in the Gazette-- (a) provide for the Director General to assume control of the whole of the property, business and affairs of that railway company, and carry on the whole of its business and affairs, or to assume control of such part of its property, business and affairs and carry on such part of its business and affairs, as may be set out in the order, or for the Director General to appoint any person to do so on behalf of the Director General and for the costs and expenses of the Director General, or the remuneration of the person so appointed, as the case may be, to be payable out of the funds and properties of the company as a first charge thereon;

(b) whether or not an order has been made under paragraph (a), authorize an application to be made by the Director General to the High Court to appoint a receiver or manager to manage the whole business, affairs and property of that railway company, or such part thereof as may be set out in the order, and for all such incidental, ancillary or consequential orders or directions of the High Court in relation to such appointment as may, in the opinion of the Director General, be necessary or expedient.

(2) An order of the Minister under subsection (1) may, from time to time, be modified, amended, altered, varied or replaced either prospectively, or where it is not impracticable or unjust to do so, retrospectively, by a further order under subsection (1). 50 Laws of Malaysia ACT 463

(3) An order made under subsection (1) or subsection (2) may, at any time, be revoked by an order similarly made by the Minister and any such order may contain all such orders, directions or provisions of an incidental, ancillary or consequential nature as may be deemed necessary or expedient by the Minister. Provisions relating to appointment under section 80

81. (1) A person appointed by the Director General under paragraph 80(1) (a) shall be appointed for such period as may be determined by the Director General, but not exceeding, in any case, two years, but may be reappointed, with the prior approval of the Minister, for three further consecutive periods not exceeding one year each, and shall, during such period of appointment or reappointment, hold his appointment at the pleasure of the Director General.

(2) The terms and conditions of the appointment referred to in subsection (1) shall, subject to the order under which the appointment is made and to subsection (1), be determined by the Director General and shall be binding on the railway company concerned. (3) A person holding any appointment as is referred to in subsection (1) shall not incur any obligation or liability solely by reason of his holding such appointment.

(4) Where a receiver or manager has been appointed in respect of a railway company by the High Court under paragraph 80(1) (b), all proper costs, charges and expenses, including the remuneration of such receiver or manager, shall be payable out of the assets of the railway company in priority to all other claims. Provisions relating to assumption of control under section 80

82. (1) Where control of a railway company has been assumed in pursuance of an order under section 80, the company and its directors and officers shall submit its property, business and affairs to such control, and shall provide the Director General or, if the control is assumed by a person appointed by the Director General (hereinafter in this Part referred to as "the appointed person"), to such appointed person, all such facilities as may be required to carry on the business and affairs of the railway company. (2) Where control of a railway company has been assumed in pursuance of an order under section 80, the Director General or the appointed person, as the case may be, shall remain in control 51Railways

of the property, business and affairs of the railway company concerned, and carry on the business and affairs of that company in the name and on behalf of that company, as provided in the said order, until such time as the said order

is revoked under subsection 80(3).

(3) Throughout the period of control of a railway company in pursuance of an order under section 80, there shall be vested in the Director General or the appointed person, as the case may be, all the powers of the company and of its directors under the constituent documents of that company, or exercisable by that company or its directors under any written law or otherwise howsoever, regardless whether such powers are exercisable by resolution, special resolution, or in any other manner whatsoever, and any difficulty whatsoever arising in relation thereto may be resolved by the Minister by a direction in writing. (4) During the period that an order under section 80 is in force, no director of the railway company to which the order relates shall, either directly or indirectly, engage in any activity in relation to the company, except as may be required or authorized by the Director General or the appointed person, as the case may be, and no remuneration of whatever nature shall accrue or be payable to any director of the company, except such as may be approved in writing by the Director General or the appointed person, as the case may be, in relation to any activity required or authorized as aforesaid by the Director General or the appointed person, as the case may be.

(5) For the avoidance of doubt, it is hereby declared that an order under section 80 shall not have the effect of conferring on, or vesting in, the Director General or the appointed person, as the case may be, any title to, or any beneficial interest in, any property of the railway company to which the order relates. PART XI

MISCELLANEOUS PROVISIONS

Power of entry

83. The Director General or any person authorized by him in that behalf may, for the purposes of this Act or any regulations made thereunder, enter upon any railway or railway premises to inspect and examine the state of such railway or railway premises. 52 Laws of Malaysia ACT 463

Disposal of differences between railway companies regarding conduct of joint traffic

84. Where two or more railway companies, whose railways have a common terminus or a portion of the same line of railway communication, are not able to agree upon arrangements for conducting, at such common terminus or at the point of junction between them, their joint traffic safely, the Director General, upon the application of either or of any of such companies, may decide the matters in dispute between them, so far as those matters relate to the safety of the public, and may determine whether the whole or what proportion of the expenses

attending to such arrangements shall be borne by either or any of the companies respectively. Submission of memorandum for any change in existing structure of fares, etc.

85. (1) Any railway company licensed under this Act shall prepare and submit to the Director General a memorandum for any change in the existing structure of fares, rates or charges, for the approval of the Minister, and where no reply is received from the Minister within six months of its submission, the change in the existing structure of fares, rates or charges shall take effect on the expiration of such period.

(2) The railway company shall, as soon as practicable, publish the change in the existing structure of fares, rates or charges in not less than two national newspapers, one of which shall be in the national language.

(3) The Director General shall, as soon as practicable, make the necessary notification in the Gazette in respect of the change in the existing structure of fares, rates or charges. Special powers in emergency

86. (1) The Yang di-Pertuan Agong may, on the occurrence of any industrial unrest, strike, lock out or any other event which gives rise to an emergency or in the interest of public order or safety, authorize the Minister to--

(a) take temporary possession of any railway or railway service or facility established, maintained or worked by a railway company;

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(b) withdraw, partially or totally, the use of any railway service or facility from any person or class of persons or from the public at large.

(2) If any doubt arises as to the existence of a public emergency or whether any act done under subsection (1) was in the interest of public order or safety, a certificate signed by the Yang di-Pertuan Agong and exhibited at such places as the Minister deems fit shall be conclusive proof on the point.

(3) Where the Government takes possession of any railway or railway service or facility under paragraph (1) (a), adequate compensation shall be paid.

Restriction on execution against railway property

87. (1) None of the rolling-stock, machinery, plant, tools, fittings, materials or effects used or provided by a railway company for the purpose of traffic on its railway, or of its stations or workshops, shall be liable to be taken in execution of any decree or order of any court or of any local

authority or person having by law power to attach or distrain property, or otherwise to cause property to be taken in execution unless by order or direction of the court pursuant to paragraph 80(b).

(2) Nothing in subsection (1) shall be construed as affecting the authority of any court to attach the earnings of a railway company in execution of a judgement or order.

Power to make regulations

88. (1) The Director General may, with the approval of the Minister, from time to time, make such regulations as may be necessary or expedient for carrying out or achieving the objects and purposes of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made--

(a) to ensure and regulate the safe carriage of passengers and goods by any railway company;

(b) to regulate the safe use and maintenance of railway premises;

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(c) to declare what shall be deemed to be dangerous or offensive goods and the regulation of the carriage of such goods; (d) to prescribe maximum charges to be paid for the conveyance of passengers and goods by any railway company;

(e) to declare what shall be deemed to be infectious or contagious diseases and to regulate the conditions under which railway companies may carry persons or animals suffering from such infectious or contagious diseases, and to provide for the disinfection of coaches which have been used by such persons or animals;

(f) to regulate the construction and maintenance of railways and the crossing or manner of approach to any public road or thoroughfare by a train;

(g) to provide for the prevention of trespass, nuisance or obstruction upon, or damage or injury to, a railway; (h) to provide for the preservation and promotion of good order, sanitation and cleanliness upon a railway; (i) to prescribe forms and procedures relating to registration of train drivers and any other persons entrusted with the charge, control or operation of a railway and to prescribe minimum qualifications to be possessed by such persons; and

(j) to prescribe minimum standards and specifications in respect of the

design, construction and maintenance of the gates or barriers of an occupation crossing and to regulate the use of such crossing.

PART XII

RAILWAY ASSETS CORPORATION AND

RAILWAY PROPERTY

Establishment, membership and functions of the Railway Assets Corporation

89. (1) There shall be established a body corporate by the name of "Railway Assets Corporation" (hereinafter referred to as "the Corporation") with perpetual succession and a common seal and may sue and be sued in its name and subject to and for the purposes of this Act, may enter into contracts, and may acquire, purchase, 55Railways

take, hold and enjoy movable and immovable property of every description and may convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest therein vested in the Corporation upon such terms as it deems fit. (2) The Corporation shall consist of the following members who shall be appointed by the Minister:

(a) a representative of the Ministry of Transport; (b) a representative of the Treasury;

(c) a representative of the Economic Planning Unit; (d) the Federal Lands Commissioner;

(e) the Railway Assets Manager who shall be an ex-officio member; and

(f) not more than two other members.

(3) The Minister shall appoint a person from amongst the members of the Corporation to be the Chairman.

(4) Where the Chairman is unable to attend any meeting of the Corporation due to illness, incapacity or any other reason, the Minister may appoint any other member as he thinks fit to preside over the meeting and that member may exercise all the powers of the Chairman in respect of that meeting.

(5) The Chairman and four other members shall form a quorum at all meetings of the Corporation.

(6) If on any question to be determined there is an equality of votes, the Chairman shall have a casting vote.

(7) The provisions of the Schedule shall apply to the Corporation. (8) The functions of the Corporation shall be--

(a) to manage, administer and maintain--

(i) all property and rights of the Malayan Railway Administration under the repealed Ordinance which by virtue of section 92 are vested in the Corporation; 56 Laws of Malaysia ACT 463

(ii) all property vested in, held or acquired by the Federal Lands Commissioner under the repealed

Ordinance which by virtue of section 93 are vested in the Corporation,

and to manage and administer all liabilities in respect thereof;

(b) to promote and undertake projects for the development or redevelopment of any railway infrastructure or facilities; and

(c) to carry out and perform such other functions as may be prescribed by the Minister under this Act.

Appointment of the Railway Assets Manager

90. (1) The Minister may, from time to time, appoint a fit and proper person to be the Railway Assets Manager who shall be the chief executive officer of the Corporation.

(2) There shall be paid to the Railway Assets Manager such remuneration or allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

Power of Minister to give directions

91. (1) The Corporation shall be responsible to the Minister, and the Minister may, from time to time, give directions not inconsistent with the provisions of this Act and the Corporation shall, as soon as possible, give effect to all such directions.

(2) In carrying out any direction of the Minister under subsection (1), the Corporation shall have power to do all things expedient or reasonably

necessary or incidental to the discharge of its functions, and in particular, but without prejudice to the generality of the foregoing, shall have power--

(a) to receive financial assistance or grant from the Federal Government or any other person or otherwise with the approval of the Minister of Finance to borrow money from any financial institution or other person and in connection therewith to provide such security as it thinks appropriate;

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(b) with the approval of the Minister of Finance, to give financial assistance to any railway company nominated by the Minister, including a subsidiary of such company, for the carrying out of any project relating to the provision of railway facilities and services; and

(c) with the approval of the Minister of Finance, to enter into any arrangement for sharing of profits, union of interest, cooperation or joint venture with any railway company nominated by the Minister or any other person or body of persons or to establish or promote the establishment and expansion of companies under the Companies Act 1965 [Act 125].

Dissolution of Malayan Railway Administration and vesting of its property in the Corporation

92. (1) The Malayan Railway Administration in existence under the repealed Ordinance is dissolved.

(2) All property, rights and liabilities of the Malayan Railway Administration under the repealed Ordinance shall, upon the commencement of this Act, vest in the Corporation without any conveyance, assignment or transfer whatsoever and all references to "Malayan Railway Administration", "Malayan Railway", or "General Manager, Malayan Railway" in relation to such property in any instrument, deed, title, document or written law shall be construed as if all such references were references to the "Railway Assets Corporation".

Vesting of property in the Corporation

93. All property vested in, held or acquired by the Federal Lands Commissioner under the repealed Ordinance shall vest in the Corporation under this Act without any conveyance, assignment or transfer whatsoever for the like title, estate, or interest and on the like tenure as the same was vested or held immediately before the commencement of this Act and all references to the "Federal Lands Commissioner" in relation to such property in any instrument, deed, title, document or written law shall be construed as if all such references were references to the "Railway Assets Corporation". 58 Laws of

Vesting of property situated in the Republic of Singapore in the Federal Lands Commissioner

94. (1) All lands in the Republic of Singapore vested in the Government of Malaysia or the Federal Lands Commissioner for the purposes of operating and managing railway services in the Republic pursuant to or under the Singapore Railway Transfer Ordinance 1918 or the Railway Act 1987 of the Republic shall continue to vest in the Government of Malaysia or the Federal Lands Commissioner, as the case may be, under this Act. (2) All property situated in the Republic of Singapore and which are vested in, held or were acquired by the Federal Lands Commissioner under the repealed Ordinance shall continue to vest in the Federal Lands Commissioner under this Act. Liabilities enforceable against the Corporation or Federal Lands Commissioner

95. All existing liabilities incurred by or on behalf of or for the purposes of the Malayan Railway may be enforced against the Corporation or the Federal Lands Commissioner, as the case may be.

Appointment of officer, etc., of the Corporation

96. (1) The Corporation may, with the concurrence of the Public Services Department and the Treasury, from time to time, appoint such number of officers and servants on such terms and conditions as the Corporation may prescribe in rules made under this Part as may be necessary for carrying out the purposes of this Part. (2) The Corporation may, from time to time, employ and pay agents and technical advisers, including advocates and solicitors, bankers, stockbrokers, surveyors, valuers and other persons, to transact any business or to do any act required to be transacted or done in the performance of its functions, the exercise of its powers or the discharge of its duties or for the better carrying into effect the purposes of this Act.

(3) An officer of or any other person appointed by the Corporation shall be subject to the control and direction of the Corporation. 59Railways

Public Authorities Protection Act 1948

97. The Public Authorities Protection Act 1948 [Act 198] shall apply to any action, suit, prosecution or proceeding against the Corporation or against any officer or servant of the Corporation in respect of any act, neglect or default done or committed by him in such capacity.

Establishment of Railway Assets Corporation Fund

98. (1) For the purposes of this Part, there shall be established a Railway Assets Corporation Fund (hereinafter referred to as "the Fund").

(2) The Fund shall consist of--

(a) such sums as may be provided by the Federal Government from time to time for the purposes of the Corporation under this Part;

(b) such sums as may be made available from time to time to the Corporation by way of loans; and

(c) moneys earned or arising from any sale of property or any other transaction relating to property or investments, mortgages, charges or debentures acquired by or vested in the Corporation.

(3) The Fund shall be expended for the purposes of paying any expenditure lawfully incurred by the Corporation for carrying into effect the provisions of this Part and the remuneration of officers and servants appointed and employed by the Corporation, including superannuation allowances, pensions or gratuities. (4) The expenditure of the Corporation up to such amount as may be authorized by the Minister of Finance, after consultation with the Minister, for any one year shall be defrayed out of the Fund.

(5) Before the beginning of each financial year, the Corporation shall submit to the Minister of Finance an estimate of the expenditure (including those for development projects) for the following year in such form and containing such particulars as the Minister of 60 Laws of Malaysia ACT 463

Finance may require, and the Minister of Finance shall, after consultation with the Minister, before the beginning of that following year, notify the Corporation of the amount authorized for expenditure generally or of the amounts authorized for each description of expenditure.

(6) The Corporation may, at any time, submit to the Minister of Finance a supplementary estimate for any one year and the Minister of Finance may, after consultation with the Minister, allow the whole or any part of the additional expenditure. Ineligibility for employment as officers or servants of the Corporation

99. (1) No person shall be eligible for employment as an officer or servant of the Corporation who has, directly or indirectly, by himself or his partner, any share or interest in any contract or proposed contract with, for or on behalf of the Corporation. (2) Any officer or servant of the Corporation who has or acquires any such share or interest shall be liable in the discretion

of the Corporation to be dismissed.

(3) If any officer or servant of the Corporation at the time of his appointment as such officer or servant already owns or controls any share or interest in any property which, subsequent to his appointment as such officer or servant, is included or is intended to be included in any contract or proposed contract with, for or on behalf of the Corporation, he shall disclose the same in writing to the Corporation.

Audited accounts, returns, reports, accounts and information

100. (1) The Corporation shall furnish the Minister with the annual audited accounts of each financial year within six months of the following year.

(2) The Corporation shall furnish the Minister with all such returns, reports, accounts and information with respect to its property and activities as the Minister may from time to time require. 61Railways

(3) Without prejudice to the generality of the provisions of subsection (1), the Corporation shall, as soon as practicable, after the end of each financial year, cause to be made and transmitted to the Minister a report dealing with the activities of the Corporation during the preceding financial year and in such form and containing such information relating to the proceedings and policy of the Corporation as the Minister may from time to time direct. Power to dismiss officers and servants and dispose of questions as to their remuneration, etc.

101. (1) Subject to any rules made under this Part, the Railway Assets Manager shall, at the direction of the Corporation, dispose of all questions relating to the service, remuneration, privileges and allowances of officers and servants of the Corporation. (2) Subject to any rules made under this Part, the Corporation may delegate its power to exercise disciplinary control over officers and servants of the Corporation to the Railway Assets manager except its power to dismiss any officer or servant of the Corporation.

Rules governing conditions of service of officers and servants

102. The Corporation may, with the concurrence of the Public Service Department and the Treasury, from time to time, make rules in respect of the terms and conditions of service of officers and servants of the Corporation including rules to provide for the discipline of officers and servants of the Corporation. The Corporation may dispose of immovable property vested in it

103. The Corporation may sell, convey, transfer, lease, assign, surrender and yield up, mortgage, charge, reconvey, re-assign, or otherwise deal with any

immovable property referred to in section 93 upon such terms and conditions as the Minister deems fit.

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Certain public lands deemed to be railway reserves

104. Notwithstanding the provisions of any written law relating to the reservation of land for public purposes--

(a) all State land which at the commencement of the repealed Ordinance was in the occupation, or under the control, or used for the purposes, of the Malayan Railway, shall be deemed to be railway reserves under this Act whether or not any express reservation has been notified in respect thereof; and

(b) all land which was deemed to be a railway reserve under section 16 or 17 of the repealed Ordinance shall continue to be deemed a railway reserve under this Act.

PART XIII

REPEAL AND SAVINGS

Repeal and savings

105. (1) The Railway Ordinance 1948 is repealed. (2) Notwithstanding subsection (1), all subsidiary legislations made under or in accordance with the repealed Ordinance shall, in so far as they are not inconsistent with this Act, continue in force until amended, revoked or replaced by this Act. (3) Except in so far as it is expressly provided to the contrary, nothing in this Act shall--

(a) affect the previous operation of, or anything duly done or suffered under the repealed Ordinance; and

(b) affect any right, title, interest, liberty, privilege, obligation or liability acquired, accrued or incurred under the repealed Ordinance.

(4) All rent payable in respect of any lease of railway reserves granted under the provisions of the repealed Ordinance shall, upon the commencement of this Act, be paid into the Federal Consolidated Fund.

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Power of Minister to make additional transitional provisions, etc.

106. The Minister may, by regulations, make such provisions as he considers necessary or expedient for the purpose of removing any difficulty occasioned by the coming into force of this Act, and any such regulations may be made so as to have effect as from the commencement of this Act.

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SCHEDULE

[Subsection 89(7)]

Appointment, revocation and resignation

1. (1) A member of the Corporation shall, subject to such conditions as may be specified in his instrument of appointment, hold office for a term not exceeding three years and is eligible for reappointment.

(2) The appointment of any member may at any time be revoked by the Minister.

(3) A member may at any time resign his office by letter addressed to the Minister.

(4) Every member shall devote such time to the business of the Corporation as is necessary to discharge his duties effectively. Vacation of office

2. (1) The office of a member of the Corporation shall be vacated-- (a) if he dies;

(b) if there has been proved against him, or he has been convicted on, a charge in respect of--

(i) an offence involving fraud, dishonesty or moral turpitude; (ii) an offence under any law relating to corruption; or (iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu to a fine) for more than two years; (c) if he becomes bankrupt;

(d) if he is of unsound mind or is otherwise incapable of discharging his duties;

(e) if he absents himself from three consecutive meetings without leave of the Corporation;

(f) in the event of his resignation being accepted by the Minister; or (g) if

his appointment is revoked by the Minister. (2) Where any person ceases to be a member by reason of any of the provisions of this Act, another person shall be appointed in his place in accordance with the provisions applying.

Remuneration or allowance

3. There may be paid to members of the Corporation such remuneration or allowance as the Minister may determine.

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Meetings

4. (1) The Corporation shall meet as and when required. (2) Subject to the provisions of this Act, the Corporation shall determine its own procedure.

Corporation may invite others to meetings

5. The Corporation may request any person (not being a member of the Corporation) to attend any meeting or deliberation of the Corporation for the purpose of advising it on any matter under discussion, but any person so attending shall have no right to vote at the said meeting or deliberation.

Disclosure of interest

6. A member of the Corporation having, directly or indirectly, by himself or his partner, any interest in any company or undertaking with which the Corporation proposes to make any contract or having any interests in any such contract or in any matter under discussion by the Corporation shall disclose to the Corporation the fact of his interest and the nature thereof and such disclosure shall be recorded in the minutes of the Corporation and, unless specifically authorized thereto by the Chairman, such member shall take no part in the deliberation or decision of the Corporation relating to the contract or matter. Minutes

7. The Corporation shall cause minutes of all its meetings to be maintained and kept in a proper form.

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LAWS OF MALAYSIA

Act 463

RAILWAYS ACT 1991

LIST OF AMENDMENTS

Amending law Short title In force from

? NIL ?

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LAWS OF MALAYSIA

Act 463

RAILWAYS ACT 1991

LIST OF SECTIONS AMENDED

Section Amending authority In force from

? NIL ?

DICETAK OLEH

PERCETAKAN NASIONAL MALAYSIA BERHAD,

KUALA LUMPUR

BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA