

Namibia

## National Transport Services Holding Company Act, 1998

Act 28 of 1998

Legislation as at 1 November 2006

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Republic of Namibia  
Annotated Statutes

# National Transport Services Holding Company Act, 1998

## Act 28 of 1998

Published in Government Gazette 1961 on 23 September 1998

**Assented to on 4 September 1998**

**There are multiple commencements**

| Provisions                          | Status   |
|-------------------------------------|--|
| Section 1–4, section 14, section 20 | commenced on 1 January 1999 by <a href="#">Government Notice 306 of 1998</a> . |
| Section 5–13, section 15–19         | commenced on 1 April 1999 by <a href="#">Government Notice 51 of 1999</a> .    |

**[This is the version of this document from 1 November 2006 and includes any amendments published up to 5 July 2024.]**

**[Amended by [Public Enterprises Governance Act, 2006 \(Act 2 of 2006\)](#) on 1 November 2006]**

## ACT

**To provide for the incorporation of a holding company to undertake, either by itself or through any subsidiary company, transport services in Namibia or elsewhere; and to provide for matters incidental thereto.**

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

### 1. Definitions

In this Act, unless the context otherwise indicates -

“articles” means the articles of association of the Holding Company;

“board” means the board of directors of the Holding Company;

“Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);

**[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]**

“Corporation” means TransNamib Limited established by section 2 of the repealed Act;

“Holding Company” means the public company contemplated in section 2(1);

“memorandum” means the memorandum of association of the Holding Company;

“Minister” means the Minister responsible for Transport;

“repealed Act” means the National Transport Corporation Act, 1987 (Act No. 21 of 1987), repealed by section 19;

**[definition of “Shareholding Minister” deleted by Act 2 of 2006]**

“subsidiary company” means a subsidiary company as defined in section 1 of the Companies Act, and which is a subsidiary company of the Holding Company;

“transfer date” means the date determined by the Minister in terms of section 14(1)(a); and

“transport services” means the transport of passengers or goods by railway, road, air or any other manner which may be approved by the Cabinet, and includes everything that is connected therewith or is necessary to render such services.

## 2. Incorporation of Holding Company

(1) **[subsection (1) deleted by Act 2 of 2006]**

(2) (a) ...

(b) the Holding Company shall, subject to subsection (5), be deemed to comply with the provisions of the Companies Act relating to the membership of a public company.

**[subsection (2), with the exception of paragraph (b), deleted by Act 2 of 2006]**

(3) The Registrar of Companies defined in section 1 of the Companies Act shall, on receipt of the memorandum and articles referred to in subsection (2), register such memorandum and articles in accordance with the Companies Act.

(4) The Holding Company is exempt from the payment of all fees chargeable in terms of the Companies Act which relate to the checking of documents, the reservation and registration of the name of a company or a shortened form thereof, the registration of its memorandum and articles and the issue of a certificate to commence business.

(5) Sections 66, 174, 190 and 344(d) of the Companies Act shall not, while the State is a member of the Holding Company and the total number of members of the Holding Company is less than seven, apply to the Holding Company.

(6) The Minister shall, within a period of 28 days after the registration of the memorandum and articles, or any alteration or addition made thereto, as the case may be, table such memorandum and articles, or such alteration or addition, as the case may be, in the National Assembly if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within a period of 28 days after the commencement of its next ensuing ordinary session.

**[subsection (6) amended by Act 2 of 2006 to delete the word “Shareholding”]**

## 3. Shareholding in Holding Company

(1) Upon the incorporation of the Holding Company, every share, debenture or stock issued by the Corporation under the repealed Act shall be deemed to be a share, debenture or stock issued by the Holding Company.

- (2) The Minister shall, on behalf of the State, exercise the rights attached to the shares of which the State is the holder.

[subsection (2) substituted by Act 2 of 2006]

- (3) [subsection (3) deleted by Act 2 of 2006]

- (4) [subsection (4) deleted by Act 2 of 2006]

- (5) Without the prior consent of the Cabinet -

- (a) the Minister shall not alienate any shares held by the State in the Holding Company; and
- (b) the Holding Company shall not issue any shares to any person other than the State.

[subsection (5) amended by Act 2 of 2006 to delete the word "Shareholding"]

#### 4. Objects of Holding Company

Subject to the other provisions of this Act -

- (a) the main object of the Holding Company is to provide and promote, either by itself or through any subsidiary company, transport services in Namibia or elsewhere by managing, developing and utilising the resources and assets at its disposal;
- (b) the secondary objects of the Holding Company are -
  - (i) to manage and develop, either by itself or through any subsidiary company, immovable property, including such property as may be transferred to it by virtue of section 14(1)(a);
  - (ii) to conduct, either by itself or through any subsidiary company, and with the consent of the Minister, any other business,

[subparagraph (ii) amended by Act 2 of 2006, to delete the word "Shareholding"]

on a commercial basis.

#### 5. Powers of Holding Company and appointment of chief executive officer

- (1) Subject to the other provisions of this Act, the Holding Company may -
- (a) conduct any business activity in any branch of any of its objects, including the introduction of new services or the continuation or the termination of existing services;
  - (b) enter into an agreement with any person, organisation or authority to perform a particular act or to render a particular service on behalf of or in favour of or to the benefit of the Holding Company;
  - (c) in writing delegate any of its powers, including a delegated power, to any person, organisation or authority contemplated in paragraph (b) if the Holding Company considers it necessary for the efficient performance of any act or service contemplated in that paragraph; or
  - (d) exercise such other powers as the Minister may, by notice in the Gazette and at the request of the board, confer upon the Holding Company.
- (2) The Holding Company shall take all the necessary steps to facilitate, at any property or facility of the Holding Company, the reasonable performance of any function by the State under any law.

- (3) The board shall, after consultation with the Minister, appoint a chief executive officer for such period and, subject to section 22(3) of the Public Enterprises Governance Act, 2006, on such terms and condition as the board may determine, to serve as the manager of the Holding Company.

**[Subsection (3) is substituted by Act 2 of 2006, as amended by Act 8 of 2015. The Public Enterprises Governance Act referred to is Act 2 of 2006.]**

- (4) The chief executive officer appointed in terms of subsection (3) shall not be a director of the Holding Company, and -
- (a) shall, at the invitation of the Board, attend;
  - (b) may partake in discussions at; and
  - (c) shall not be entitled to vote at,
- any meeting of the board.

## 6. Performance agreement

- (1) The Holding Company shall, subject to subsection (2), not later than two months before the commencement of every third financial year, and in accordance with such procedures as the Minister may determine, submit to the Minister a draft performance agreement which shall contain particulars of -
- (a) the expectations of the Government in respect of the Holding Company's and every subsidiary company's scope of business, efficiency and financial performance;
  - (b) the principles to be followed by the Holding Company and every subsidiary company for the purposes of business planning;
  - (c) the Holding Company's and every subsidiary company's dividend policy;
  - (d) the measures which may, in the opinion of the Minister, be necessary to protect the financial soundness of the Holding Company and every subsidiary company, including the Holding Company's investment policy and indemnity insurance, a declaration of the loans made or granted by the Holding Company, and the Holding Company's cover against exchange rate risks;
  - (e) the measures by which the performance of the Holding Company and every subsidiary company can be assessed, including such measures as may relate to their -
    - (i) financial performance;
    - (ii) operational and service level performance; and
    - (iii) management of human resources; and
  - (f) any other matter relating to the performance of the Holding Company's and every subsidiary company's functions under this Act which the Minister may require.
- (2) The first draft performance agreement contemplated in subsection (1) shall be submitted as provided for in that subsection within a period of two months after the transfer date, or before such later date as the Minister may by notice in the Gazette determine.
- (3) The Minister shall, within a period of two months after the receipt of the draft performance agreement contemplated in subsection (1) -
- (a) approve; or

- (b) after consultation with the Holding Company, amend and approve, the draft agreement, but subject thereto that if the Minister fails to so approve the performance agreement within a period of two months after receipt thereof, the agreement shall be deemed to have been so approved at the expiration of such period.
- (4) Upon approval of the draft performance agreement by the Minister under subsection (3), the Minister and the chairperson of the board shall sign the agreement.
- (5) The Minister and the Holding Company may, at any time after signature of a performance agreement, amend such agreement.
- (6) An amendment in accordance with subsection (5) shall be in writing and shall be signed by the Minister and by the chairperson of the board.
- (7) The failure of the Holding Company to comply with any provision of a performance agreement or any amendment thereof, shall not affect the validity or enforceability of any act, deed, agreement, right, obligation or liability performed, entered into, acquired or incurred by the Holding Company.

[section 6 amended by Act 2 of 2006, to delete the word "Shareholding" throughout]

## 7. Annual report

- (1) The Holding Company shall, in addition to any record, statement or report required in terms of Chapter XI of the Companies Act, and within six months after the end of each financial year of the Holding Company, submit to the Minister a report on the activities of the Holding Company and of every subsidiary company during that financial year, which annual report shall include -
- (a) an auditor's report and the audited and approved annual financial statements contemplated in that Chapter in respect of the business of the Holding Company and of every subsidiary company, and which shall be compiled separately in respect of -
- (i) each business conducted by the Holding Company or any subsidiary company; and
- (ii) the management of the railway as contemplated in section 13; and
- (b) a report on -
- (i) the Holding Company's and every subsidiary company's performance in relation to the relevant performance agreement contemplated in section 6; and
- (ii) such other matters as the Minister may in writing require.
- (2) The Minister shall, within a period of 28 days after the receipt of the annual report referred to in subsection (1), table such report, together with the relevant performance agreement contemplated in section 6, including any amendment made thereto, in the National Assembly, if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within a period of 28 days after the commencement of its next ordinary session.

[section 7 amended by Act 2 of 2006, to delete the word "Shareholding" throughout]

## 8. Power of Minister to issue directions to Holding Company

- (1) The Minister may, if he or she considers it necessary in, or expedient to, the national interest or for the discharge of an international obligation of the State, after consultation with the Holding Company, by notice in writing to the Holding Company, issue a direction to the Holding Company to -
- (a) perform any function conferred or imposed on the Holding Company by or under this Act relating to a transport service, or perform such function subject to such limitations or conditions; or

(b) discontinue any activity relating to a transport service, specified in the notice.

**[subsection (1) amended by Act 2 of 2006]**

- (2) The Holding Company shall take all the necessary steps to give effect to a direction under subsection (1).
- (3) The Minister shall, out of moneys appropriated by Parliament for such purpose, compensate the Holding Company for any additional costs which the Holding Company incurs as a direct result of any direction under subsection (1) and which costs it cannot reasonably recover from the users of the transport service referred to in that subsection.
- (4) No person shall disclose the contents of any direction issued under subsection (1) or anything done by virtue of such direction, if the Minister has in such direction stated that the disclosure of such direction or anything so done will be detrimental to the national interest or to the discharge of an international obligation of the State.
- (5) Before any direction issued under subsection (1), excluding a direction contemplated in subsection (4), comes into operation, the Minister shall publish a notice in the Gazette, which notice shall -
  - (a) confirm that such a direction has been issued;
  - (b) summarise the main provisions of such direction;
  - (c) specify the place, date and time where and when the text of such direction will be available for inspection by any member of the public; and
  - (d) state the date when such direction shall come into operation.
- (6) Any person who contravenes any provision of subsection (4) shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

## 9. Power of Minister to demand information

Notwithstanding anything in any other law, the Minister may at any time by notice in writing require the Holding Company to furnish him or her with such information relating to the affairs of the Holding Company as he or she may reasonably require for the purpose of the performance of his or her functions in terms of this Act, and which information so required he or she specifies in such notice.

**[section 9 amended by Act 2 of 2006 to delete the word "Shareholding"]**

## 10. Termination or curtailment of transport service

- (1) The Holding Company shall not, except for reasons related to the safety of passengers or damage to goods or equipment, terminate or substantially curtail a transport service specified by the Minister by notice in the Gazette, unless -
  - (a) the prior written approval of the Minister has been obtained; and

**[paragraph (a) amended by Act 2 of 2006]**

  - (b) the Holding Company has, in a notice published in a daily newspaper circulating throughout Namibia and so published not less than 30 days before such intended termination or curtailment, indicated its intention and has in such notice provided an evaluation, mutatis mutandis in accordance with the criteria specified in subsection (2)(a), of the implications of such termination or curtailment.



- (2) The Minister may -
- (a) after considering and evaluating the implications which the intended termination or curtailment of a transport service by the Holding Company contemplated in subsection (1) will or may have on -
    - (i) the transport system of Namibia;
    - (ii) the users of the transport service; and
    - (iii) the community or region to which the transport service provides a service; and
  - (b) if he or she considers the implications referred to in paragraph (a) reconcilable with the national interest and the objects of the Holding Company,  
in writing approve of such intended termination or curtailment of the transport service, or direct the Holding Company to continue with the conducting of the transport service.
- (3) If the Minister under subsection (2) of this section directs the Holding Company to continue with the conducting of the transport service concerned, or with any part thereof, as the case may be, subsection (3) of section 8 shall mutatis mutandis apply as if such direction had been given in terms of subsection (1) of that section.

## 11. Failure of Holding Company to comply with certain provisions

- (1) If any person is of the opinion that the Holding Company has, in the course of the provision of a transport service, failed to comply with any applicable safety standard, he or she may lodge a written complaint with the Minister, which shall -
- (a) set out the grounds of the complaint;
  - (b) state the full names, the address and the interest of the complainant in the matter; and
  - (c) if appropriate, be accompanied by proof of the alleged failure to comply with any such standard.
- (2) On receipt of a complaint lodged in terms of subsection (1), the Minister shall transmit a copy thereof to the Holding Company.
- (3) The Holding Company shall, within a period of 14 days after receipt of a copy of a complaint transmitted to it in terms of subsection (2), furnish the Minister with a written reply to such complaint.
- (4) The Minister shall, after receipt of the reply to the complaint referred to in subsection (3), or if the Holding Company fails to furnish such a reply within the period of time specified in that subsection -
- (a) dismiss the complaint; or
  - (b) on such terms and conditions as he or she may determine, in writing appoint one or more persons as a commission of inquiry to investigate any complaint lodged in terms of this section, in which appointment the Minister shall -
    - (i) set out the terms of reference of the commission of inquiry; and
    - (ii) if the commission of inquiry consists of more than one member, designate one of the members of the commission of inquiry as chairperson thereof.
- (5) The commission of inquiry appointed under subsection (4)(b) -
- (a) shall, if in its opinion a hearing relating to the complaint concerned is warranted, determine a date, time and venue for the conducting of such hearing and give reasonable written notice of such hearing to the complainant and to the Holding Company;

- (b) may -
  - (i) with the prior written approval of the Minister, obtain the services of any competent person to advise it on, or assist it in, any matter relating to the performance of any of its functions;
  - (ii) subject to subsection (6), summon witnesses to appear at a hearing referred to in paragraph (a) and to at such hearing, examine such witnesses on oath or affirmation, and call for the production, and grant the inspection, of books, documents or other objects described in the summons;
  - (iii) without conducting a hearing referred to in paragraph (a), summon any person to produce to the chairperson of the commission, or if the commission consists of one person only, to such person, the books, documents or other objects described in, and at such place and on or before the date specified in, the summons.
- (6) Unless otherwise provided for in this section, the provisions of the Commissions Act, 1947 (Act No. 8 of 1947) relating to the procuring of the attendance of witnesses, the payment of witness fees, the examination and privileges of witnesses, and the production of books, documents or other objects, shall mutatis mutandis apply to the proceedings of a commission of inquiry appointed under subsection (4)(b), including to a hearing conducted by the commission, and for those purposes the chairperson of the commission of inquiry, or if the commission consists of one person only, such person, may sign such documents as may be necessary for the purpose of the hearing.
- (7) Any process to be served in terms of this section for the purposes of a hearing convened under subsection (5)(a) or for the purposes of any other proceedings of the commission, shall be served by a member of the Namibian Police Force.
- (8) Any person who, having been duly summoned to appear at any hearing convened under subsection (5)(a), or to produce any book, document or other object -
  - (a) without sufficient cause, fails to attend the hearing at the venue, date and time specified in the summons, or any postponement of such hearing; or
  - (b) when required by the chairperson of the commission of inquiry to take the prescribed oath or to make an affirmation, refuses to do so; or
  - (c) leaves the hearing without the permission of the chairperson of the commission of inquiry, whether or not such person has given evidence; or
  - (d) refuses to give evidence at the hearing or refuses to answer fully and satisfactorily any question lawfully put to him or her, or fails to produce at the hearing any book, document or other object which such person has in terms of the summons served upon him or her been required to so produce at such hearing; or
  - (e) fails to produce to the chairperson of the commission, or if the commission consists of one person only, to such person, any book, document or other object described in, at the place or on or before the date specified in, a summons referred to in subsection (5)(b)(iii) and served upon such person,shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.
- (9) The complainant and the Holding Company may at a hearing contemplated in subsection (5) be assisted or represented by any other person, and, whether personally or through a representative -
  - (a) give evidence;
  - (b) call witnesses;
  - (c) cross-examine witnesses;
  - (d) have access to any book, document or item produced in evidence; or

- (e) address the commission of inquiry on any issue relating to the inquiry.
- (10) The chairperson of the commission of inquiry appointed under subsection (4)(b), or if the commission of inquiry consists of one person only, such person, shall, as soon as practicable after the conclusion of the investigations conducted by the commission, whether or not a hearing as contemplated in subsection (5)(a) was conducted, submit to the Minister -
- (a) the record of the investigation proceedings, including, if a hearing was conducted, a record of the proceedings at such hearing;
  - (b) any book, document or other object produced to the commission, including any book, document or other object produced at the hearing concerned, or obtained by the commission in any other manner;
  - (c) a written statement of the commission's findings and the reasons for such findings; and
  - (d) the commission's recommendation in regard to any direction which the Minister may make under subsection (11).
- (11) If, after the completion of an investigation under this section, the Minister is satisfied that the Holding Company -
- (a) has failed to comply with any safety standard referred to in subsection (1), the Minister shall in writing direct the Holding Company to comply with such safety standard within the period of time determined by the Minister and specified in the direction; or
  - (b) has not failed to comply with any safety standard referred to in subsection (1), the Minister shall dismiss the complaint concerned and in writing advise the complainant and the Holding Company accordingly.
- (12) The costs incidental to the appointment of a commission of inquiry and the conducting of an investigation, including a hearing, under this section shall be paid from moneys to be appropriated by Parliament for such purposes.
- (13) Any person who wilfully interrupts the proceedings of a commission of inquiry appointed under this section, or who wilfully hinders or obstructs a commission in the performance of its functions, shall be guilty of an offence and on conviction be liable to the penalties prescribed by subsection (8).

## 12. Operating provisions

- (1) Schedule I shall apply to the continuation and execution of the relevant transport services.
- (2) The Minister may, subject to subsections (3) and (4), at any time by notice in the Gazette amend or revoke any provision of Schedule I, or add any new provision thereto.
- (3) Any amendment, revocation or addition referred to in subsection (2) which affects any law administered by any other Minister, shall be made in consultation with such other Minister.
- (4) The Minister shall table a copy of every notice contemplated in subsection (2) in the National Assembly within a period of 28 days after the publication thereof, if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within a period of 28 days after the commencement of its next ordinary session.
- (5) The National Assembly may revoke or amend any notice tabled in terms of subsection (4).
- (6) If the National Assembly revokes or amends any notice tabled in terms of subsection (4), the revocation or amendment shall not affect the validity of anything done in terms of or pursuant to such notice, or any right, privilege, obligation or liability acquired, accrued or incurred until the date immediately before the date on which the notice was so revoked or amended.

### 13. Transfer of railway to State and management of railway

- (1) The railway vesting in the Corporation is, with effect from the transfer date, transferred to the State, and the railway shall from that date vest in the State whereupon the total shareholding of the State in the Holding Company shall be reduced in accordance with the book value of the railway on the date immediately before the transfer date as estimated by the Minister in accordance with the values reflected in the asset register of the Corporation.
- (2) Subject to the other provisions of this section and to such terms and conditions as the State and the Holding Company may in writing agree upon, the railway transferred in terms of subsection (1) shall, with effect from the transfer date, be managed by the Holding Company which may, for its own account, conduct the business of transporting passengers or goods on or by means of the railway.
- (3) The Holding Company may, after consultation with the Minister, grant a concession to any person to conduct the business referred to in subsection (2) on any part of the railway.
- (4) The Minister may in writing issue directions to the Holding Company relating to -
  - (a) the minimum standards for the maintenance of any line of the railway;
  - (b) anything connected with, or necessary to perform any of the functions of, the railway,which is reasonably necessary to achieve and maintain a safe and functional railway system, and to protect the environment.
- (5) The Holding Company shall be solely responsible for the costs incidental to the maintenance of the railway, including any reinvestments required to maintain any line of the railway.
- (6) An agreement contemplated in subsection (2) shall include terms and conditions providing for -
  - (a) the compilation and publication of railway procedures by the Holding Company in pursuance of any direction issued under subsection (4); and
  - (b) the basis on which an upgrading to improve the design standard of an existing line of the railway will be effected and funded by the State and the Holding Company.
- (7) Notwithstanding anything in any other law or in the common law, any action for damages in connection with any matter relating to the operation or management of the railway by the Holding Company, or relating to the condition of the railway, shall lie against the Holding Company.
- (8) Nothing in this section shall derogate from the right of the Minister to require, at any time after the transfer date, from the Holding Company to transfer to the State any portion of land vesting in the Holding Company on which any line of the railway transferred in terms of subsection (1) is constructed, including any land so vesting which is adjacent to such line and is reasonably necessary for the operation of a railway service on such line.
- (9) The transfer of land under subsection (8) shall be effected on such terms and conditions as the State and the Holding Company may in writing agree upon, including terms and conditions relating to -
  - (a) the further reduction, over and above the reduction contemplated in subsection (1), of the shareholding of the State in the Holding Company, or the payment of reasonable compensation in lieu of such reduction;
  - (b) the survey of the land to be so transferred; and
  - (c) the rights (including proprietary rights) and obligations of the parties.
- (10) Subject to subsection (11), no new line of the railway for the transport of passengers or goods shall, without the prior written approval of the Minister and subject to such conditions as may be agreed upon by the Minister and the Holding Company or any other person, as the case may be, including conditions relating to the financing, operation and maintenance of such line and

the rights (including proprietary rights) and obligations of the parties to such agreement, be constructed or acquired by the Holding Company or by any such other person.

- (11) An approval referred to in subsection (10) shall not be required for -
- (a) the construction of sidings or of short branch lines to mines, stores, warehouses or other works or premises, if such sidings or branch lines are not intended for the transport of passengers or goods;
  - (b) the construction of any line of the railway, not exceeding five kilometres in length, which shall be required for the purpose of facilitating the movement of trains and which shall -
    - (i) provide a connection between two existing lines of the railway; or
    - (ii) serve as an avoiding line between two points on the same existing line of the railway; or
  - (c) the construction of a line of the railway intended to provide access between a marshalling yard and one or more existing lines of the railway over the shortest practicable route.
- (12) For the purposes of this section -
- (a) “maintenance” includes repair;
  - (b) “manage” includes the planning, design, construction, maintenance and control of the railway, and “management” has a corresponding meaning; and
  - (c) “railway”, subject to subsection (13), means -
    - (i) any main railway line and the railway reserve fences, including any such railway line in any station or siding and all rails and check rails, jointing materials of rails, sleepers and longitudinal ties, fastenings, ballast stone, turnouts, stop blocks, turntables, clearance marks, derailing devices and small fittings of that line of the railway; and
    - (ii) any signalling system including all rail track regulatory signs, warning signs and information and guiding signs on or in respect of that line of the railway,which vest in the Corporation on the transfer date.
- (13) If any railway station or siding referred to in subsection (12), consists of more than one loop line on the main railway line, only one such loop line as may be determined by the Minister after consultation with the Holding Company, shall be transferred in terms of this section.
- (14) The State shall at all times be entitled to a right of way over the land vesting in the Corporation and on or over which any railway line contemplated in subsection (12) is constructed.
- (15) Section 14(1)(c) and (2) shall mutatis mutandis apply to the transfer of the railway and of land in terms of this section.
- (16) The Holding Company shall, pursuant to a reduction of the shareholding of the State contemplated in subsections (1) and (9), reduce the share capital of the Holding Company accordingly, whereupon such a reduction of share capital shall be deemed to have been effected under section 84 of the Companies Act.
- (17) The provisions of this section, in so far as they provide for a limitation on the right to conduct the business of transporting passengers or goods by means of a railway, are enacted upon the authority of article 21(2) of the Namibian Constitution.

#### 14. Transfer of assets to Holding Company

- (1) Notwithstanding anything in any other law, but subject to this Act -
  - (a) the whole of the business, the ownership in all the movable and immovable property, the assets and liabilities, and the rights and obligations, but excluding the railway as defined in section 13(12)(c), which were managed by, vested in and binding upon the Corporation in accordance with the repealed Act, shall be transferred to the Holding Company with effect from a date determined by the Minister by notice in the Gazette, and such business, property, assets, liabilities, rights and obligations of the Corporation shall, from that date, vest in and be binding upon the Holding Company;
  - (b) any liability or obligation referred to in paragraph (a) shall become binding upon the Holding Company as contemplated in that paragraph, even if the creditors concerned did not consent to such transfer, and such liability or obligation shall on its transfer to the Holding Company become a liability or obligation of the Holding Company in all respects as if incurred by the Holding Company;
  - (c) no additional sales levy, transfer duty, stamp duty, sales tax or any other levy, duty or tax, or any registration fee, chargeable under any law shall be payable in respect of the transfer of the property, assets or rights referred to in paragraph (a); and
  - (d) any licence, exemption, permit, certificate, grant, concession or authority in respect of the business or property referred to in paragraph (a), held by the Corporation before the transfer date in terms of any law shall, with effect from the transfer date, for the purpose of any such law be held by the Holding Company in respect of such business or property.
- (2) Upon the submission of a certificate referred to in subsection (1) to the Registrar of Deeds appointed in terms of section 2 of the Deeds Registry Act, 1937 (Act No. 47 of 1937), or to any other person in charge of any other office where a register or record of the ownership of or entitlement to an asset or right described in such certificate is being kept, the Registrar or such other person, as the case may be, shall make such entries in or on any relevant register, title deed or other document in his or her office or submitted to him or her as may be necessary to effect the transfer contemplated in that subsection in the name of the Holding Company.

**[The Deeds Registries Act 47 of 1937 has been replaced by the Deeds Registries Act 14 of 2015.]**

- (3) For the purposes of the Income Tax Act, 1981 (Act No. 24 of 1981) -
  - (a) the Holding Company shall, on the transfer date, succeed the Corporation in all respects; and
  - (b) a subsidiary shall, to the extent determined by the board in consultation with the Minister of Finance, succeed the Holding Company upon any transfer contemplated in section 15(2) which is effected in the first financial year of the Holding Company, or within such further period of time as the Minister may, in consultation with the Minister of Finance, in writing determine.

**[paragraph (b) amended by Act 2 of 2006]**

- (4) Notwithstanding anything in any other law, the Holding Company may, before or on a date not later than five years after the transfer date, or such later date as the Minister may by notice in the Gazette determine, develop, cause to be developed, use or let its immovable property for any purpose, including for the purpose of the construction and development of buildings or structures for commercial purposes, notwithstanding the fact that the immovable property concerned is either not zoned, or is zoned or intended for other purposes in terms of an applicable township construction, development scheme or guide plan, or for any other purpose in terms of any other statutory provision.
- (5) The Holding Company is substituted for the Corporation as a contracting party in respect of any agreement transferred to the Holding Company under subsection (1), without such substitution bringing about a novation of the agreement concerned.

- (6) Any litigation, including arbitration proceedings, in respect of which the cause of action arose before the transfer date and to which the Corporation is a party or would have become a party by virtue of its provision, management, maintenance, development or promotion of any transport service transferred to the Holding Company in terms of subsection (1), shall be conducted by or against the Holding Company, as the case may be.
- (7) Notwithstanding the other provisions of this Act, section 48 of the repealed Act shall continue to apply to any cause of action which arose before the transfer date.

## 15. Subsidiary companies

- (1) Every subsidiary company of the Corporation shall, for the purposes of paragraph (k) of Schedule 2 to the Companies Act, read with section 34 of that Act, be deemed to have been acquired by the Holding Company on the transfer date.
- (2) Notwithstanding anything in any other law -
  - (a) the Holding Company may at any time transfer to any subsidiary company; or
  - (b) a subsidiary company may at any time transfer to the Holding Company or to another subsidiary company,any business, property, asset, liability, right, obligation, licence, exemption, permit, certificate, grant, concession or authority vesting in, conferred upon or held by and binding upon the Holding Company or a subsidiary company, as the case may be.
- (3) The provisions of -
  - (a) sections 4, 5(1) and (2), 6(7), 8, 9, 10, 11, 12 and 13 shall mutatis mutandis apply to a subsidiary company to which any business contemplated in subsection (2) has been transferred;
  - (b) section 14(1)(b), (c) and (d), (2), (4) and (5) shall mutatis mutandis apply to any transfer contemplated in subsection (2) of this section; and
  - (c) section 16 shall mutatis mutandis apply to any employee of the Holding Company who takes up employment with a subsidiary company.

## 16. Transfer of staff to Holding Company

- (1) Notwithstanding anything in this Act, but subject to section 5(3), the person who was appointed as the managing director and any other person appointed as a director of the Corporation under the repealed Act and who held such office immediately before the transfer date, shall, subject to the same terms and conditions of appointment on which he or she was so appointed, continue to hold such office in the Holding Company as if he or she were appointed as the chief executive officer or as a director of the Holding Company in terms of this Act, until such time as the chief executive officer and every director of the Holding Company shall have been duly appointed under this Act.
- (2) If any person, other than a person referred to in subsection (1), who was in the service of the Corporation immediately before the transfer date, agrees to being transferred from that service to the service of the Holding Company, he or she shall, until he or she is offered new terms and conditions of employment as contemplated in subsection (3), or until his or her retrenchment by the Holding Company, enjoy such terms and conditions of employment as are not less favourable than those which he or she enjoyed in the service of the Corporation immediately before the transfer date, and his or her service with the Corporation shall, for the purpose of determining any right to or eligibility for retirement, pension, sick or vacation leave, or for any gratuity, be deemed to be service with the Holding Company.
- (3) The Holding Company shall within a period of three months after the transfer date, or such longer period of time as the Minister may in writing approve, determine the terms and conditions of employment in respect of the persons referred to in subsection (2) whose services the Holding

Company wishes to retain, and in writing offer the terms and conditions of employment to such persons.

- (4) The terms and conditions of employment offered in terms of subsection (3) to a person who is required to perform duties with the Holding Company reasonably comparable to the duties performed by him or her immediately before he or she transferred his or her services to the Holding Company, shall be not less favourable than the terms and conditions of employment enjoyed by him or her in the service of the Corporation immediately before the transfer date.

## 17. Voluntary winding-up

- (1) The Holding Company shall, notwithstanding Chapter XIV of the Companies Act, not be wound up voluntarily without the prior consent of the Cabinet.
- (2) For the purpose or in respect of the winding up of the Holding Company as contemplated in subsection (1) -
  - (a) the Minister shall, while the State is the holder of the majority of the issued shares of the Holding Company which carry unqualified voting rights, be deemed to have been appointed as liquidator;
  - (b) no security contemplated in section 350(1)(b) of the Companies Act shall be required to be furnished;
  - (c) the assets, liabilities, rights, obligations and employees of the Holding Company shall be transferred to the subsidiary companies in such proportion as the Minister may determine;
  - (d) sections 14 and 16 shall mutatis mutandis apply to the assets, liabilities, rights, obligations and employees of the Holding Company as if every reference to the Corporation in any of those provisions were a reference to the Holding Company, and every reference in any of those provisions to the Holding Company were a reference to the relevant subsidiary company; and
  - (e) any other reference to the Holding Company in this Act or in any other law or document shall, after such winding-up, and to the extent as the Minister may by notice in the Gazette determine, be construed as a reference to the subsidiary company.
- (3) Notwithstanding anything in the Companies Act, but subject to subsection (1) of this section, the Holding Company shall not be wound up or placed under judicial management except under the authority of an Act of Parliament.

[section 17 amended by Act 2 of 2006 to delete the word "Shareholding" throughout]

## 18. Construction of certain references in existing laws

Any reference in any law in force at the commencement of this Act, unless otherwise determined in such law or in this Act -

- (a) to the South African Transport Services, the Railway Administration, the Administration of the South African Railways and Harbours, the Department of Railways and Harbours, or the South African Railways and Harbours Administration, by whatever name it may be known, or to the Corporation, shall be construed as a reference to the Holding Company or to the subsidiary company concerned;
- (b) to officials or employees of the South African Transport Services or any Administration or Department referred to in paragraph (a), or of the Corporation, shall be construed as a reference to employees of the Holding Company or of the subsidiary company concerned;
- (c) to the State or any government whereby is included or deemed to be included the South African Transport Services or any Administration or Department referred to in paragraph (a), or the Corporation, shall be construed as a reference to the Holding Company or to the subsidiary company concerned;



- (d) to the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act No. 70 of 1957), the repealed South African Transport Services Act, 1981 (Act No. 65 of 1981), or the repealed Act, shall be construed as a reference to this Act; and

**[The Railways and Harbours Control and Management (Consolidation) Act 70 of 1957 does not appear to have been in force in Namibia when this Act was passed. Act 70 of 1957 was repealed in South Africa by the South African Transport Services Act 65 of 1981, which was made expressly applicable to “South West Africa” by virtue of section 78. Thus, even if Act 70 of 1957 had already been transferred to “South West Africa” in terms of a Transfer Proclamation, the repealing Act would have repealed it in respect of “South West Africa” because the repeal was explicitly made applicable to “South West Africa”.]**

- (e) to a railway of the Corporation shall be construed as a reference to a railway managed or controlled by the Holding Company or by the subsidiary company concerned.

## 19. Repeal of laws and savings

- (1) Subject to section 14(7) and to subsection (2) of this section, the laws specified in Schedule II are hereby repealed to the extent set out in the third column of that Schedule.
- (2) Anything done under any law repealed by subsection (1) which could have been done under a corresponding provision of this Act, shall be deemed to have been so done under such corresponding provision of this Act.

## 20. Short title and commencement

- (1) This Act shall be called the National Transport Services Holding Company Act, 1998, and shall, subject to subsection (2), come into operation on a date to be determined by the Minister by notice in the Gazette.
- (2) Sections 5 to 13, both inclusive, and 15 to 19, both inclusive, shall come into operation on the transfer date.

**[The transfer date was 1 April 1999 (GN 51/1999, GG 2075).]**

## Schedule I

### OPERATING PROVISIONS

#### 1. Compensation for livestock killed or injured by trains

- (1) The Holding Company shall, subject to the further provisions of this item, pay reasonable compensation to the owner of any livestock killed or injured by a train.
- (2) Notwithstanding paragraph (1), no compensation shall be payable in respect of any livestock killed or injured by a train if such death or injury is due to the negligence of the owner of such livestock or of his or her employee, or of any person in whose care or under whose control such livestock were at the point in time when such death or injury occurred.
- (3) No person shall, subject to paragraph (4), in terms of this item be entitled to compensation relating to the death or injury of any livestock unless such person, within a period of 48 hours after the livestock has been killed or injured, in writing gives notice to an employee of the Holding Company in charge of the nearest railway station, or in charge of a section thereof, of the death or injury and of the number and kind of the livestock so killed or injured and in respect of which compensation is claimed.
- (4) If the employee of the Holding Company referred to in paragraph (3) was aware of the death or injury of any livestock referred to in paragraph (1), such knowledge shall, notwithstanding

paragraph (3), be deemed to be sufficient compliance with paragraph (3) if the notice in terms of paragraph (3) is given within a reasonable period of time after such death or injury.

- (5) All injured livestock, or the carcasses or remains of all livestock killed, and in respect of which any compensation is claimed in terms of this item shall, subject to paragraph (6), to the best of the ability of the owner instituting the claim for compensation, be kept and preserved by him or her, until such time as the injured livestock or the carcasses or remains of such livestock have been inspected by a person appointed by the Holding Company to ascertain the value of the livestock killed or injured, or until the expiry of a period of not less than four full days from the time when the livestock was killed or injured, whichever shall first occur.
- (6) If any livestock referred to in paragraph (5) is seriously injured or maimed, and the owner or his or her employee, or an employee of the Holding Company, considers it advisable to kill such livestock, he or she may do so, without thereby in any way affecting the liability of the Holding Company for the payment of damages in respect of such livestock.
- (7) Paragraph (5) shall apply to the carcasses of any livestock killed in accordance with paragraph (6).
- (8) Any person who fails to keep and preserve, in accordance with paragraph (5), any livestock injured, or the carcasses or remains of livestock killed, by a train as set out in paragraph (1), shall not be entitled to any of the benefits in terms of this item.

## 2. Warning signals

- (1) The use or sounding of a whistle, siren or hooter of a train for not less than three seconds as a warning signal while approaching, and still at a reasonable distance from, a level crossing shall discharge the Holding Company and its employees of any legal obligation to give users of the crossing any other audible warning of the approaching train.
- (2) The use or sounding of a whistle, siren or hooter of a train as required by paragraph (1) shall be obligatory only during the hours of 05h00 to 23h00, and no legal obligation shall rest on the Holding Company to give users of a level crossing an audible warning signal of the approach of a train during any other period of time.
- (3) The use or sounding of a whistle, siren or hooter by the Holding Company at any time in the performance of any of its functions or obligations in terms of this Act shall be deemed not to constitute a nuisance in law.

## 3. Access

- (1) The Holding Company may, in the event of -
  - (a) damage to a railway line as the result of a washaway, a derailment or any other accident, or as a result of any other cause, enter, without prior permission, any land adjacent to the railway reserve, take from such land such reasonable quantity of soil, rock or other material as may be necessary for the purpose of effecting the necessary repairs to the railway line, and construct and use on such land such temporary detour of the railway line as the Holding Company may consider necessary; or
  - (b) any tree, bush, growth, fence, embankment or other obstruction on land adjacent to the railway reserve, in the opinion of the Holding Company, constituting a potential danger or hindrance to the safe and proper use or development of the railway line, or the pipeline or the telegraph or telephone services established in connection with the railway line, remove, after reasonable notice in writing, subject to paragraph (2), to the owner or occupier of such land, as much of such tree, bush, growth, fence, embankment or other obstruction as, in the opinion of the Holding Company, could endanger or hinder such safe and proper use or development.
- (2) Should any obstruction referred to in paragraph (1)(b), in the opinion of the Holding Company, actually endanger or hinder the safe and proper use or development referred to in that paragraph,

the Holding Company may, without giving notice in terms of that paragraph, undertake the work that is necessary to immediately eliminate or reduce such danger or hindrance.

- (3) The Holding Company shall pay reasonable compensation to any person in respect of damage to property suffered by him or her arising out of the exercise of the Holding Company's powers referred to in paragraph (1) or (2).

#### 4. Lost property

- (1) For the purposes of this Schedule, "lost property" does not include any object imported into Namibia and which has to be cleared or entered, or which is subject to any duty, tax or levy, in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964), the Sales Tax Act, 1992 (Act No. 5 of 1992) or the Additional Sales Levy Act, 1993 (Act No. 11 of 1993), as the case may be.

**[The Sales Tax Act 5 of 1992 and the Additional Sales Levy Act 11 of 1993 have been replaced by the Value-Added Tax Act 10 of 2000. Section 88(2) of Act 10 of 2000 states: "No reference in any other law to sales tax or to additional sales levy shall be construed as a reference to tax under this Act."]**

- (2) Any object referred to in paragraph (1) which is in terms of paragraph (3) handed over to the Holding Company, and which is not lost property as defined in paragraph (1), shall as soon as practicable be handed over by the Holding Company to the Minister of Finance.
- (3) When any property which has evidently been lost, mislaid, forgotten or left behind (in this Schedule referred to as "lost property") by the owner thereof or by any other person who may be entitled to such property (in this Schedule referred to as the "rightful owner"), is found on any premises of or under the control of the Holding Company or in any area within the boundaries of an airport, the person finding such property shall immediately hand such property over to the Holding Company by delivering it to the nearest office of the Holding Company.
- (4) Notwithstanding the Aviation Act, 1962 (Act No. 74 of 1962), lost property found in any part of an airport falling under the jurisdiction of the Ministry responsible for Transport and handed over to the Holding Company in terms of paragraph (3), shall be dealt with in accordance with this item.
- (5) Lost property handed over to the Holding Company in terms of paragraph (3) shall, in the case of property other than negotiable instruments, coins or banknotes, be stored in a warehouse on behalf of the rightful owner, or, in the case of negotiable instruments, coins or banknotes, be paid into an appropriate suspense account for the account of the rightful owner.
- (6) The Holding Company shall not be liable for any loss of or damage to lost property stored in a warehouse or paid into a suspense account, as the case may be, in terms of paragraph (5), or sold by public auction in terms of paragraph (7), or sold or destroyed, as the case may be, in terms of paragraph (8), irrespective of how such loss or damage may have been caused.
- (7) If lost property handed over to the Holding Company in terms of paragraph (3) is not claimed by the rightful owner within a period of three months from the date on which it was so handed over to the Holding Company, the rightful owner shall be deemed to have relinquished ownership of the lost property and such property shall, subject to paragraph (8), be sold by the Holding Company by public auction.
- (8) Notwithstanding paragraph (7) -
  - (a) perishable lost property may, after having been handed over to the Holding Company, be sold at any time and in any manner determined by the Holding Company; and
  - (b) lost property without any commercial value, may, at the discretion of, and in the manner determined by, the Holding Company, be destroyed at any time after having been handed over to the Holding Company.
- (9) Sections 410 and 411 of the Companies Act relating to unpaid dividends shall, subject to paragraph (10), mutatis mutandis apply to any lost property in the form of negotiable instruments, coins or banknotes handed over to the Holding Company in terms of paragraph (3) and deposited in

a banking account in terms of paragraph (5), and to the proceeds of any lost property sold at an auction held under paragraph (7) or sold in terms of paragraph (8)(a).

**[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004, which addresses unpaid dividends in section 416.]**

- (10) The Holding Company may, before complying with any provision of paragraph (9), deduct from the proceeds of any lost property sold at an auction or other sale, or from any negotiable instruments, coins or banknotes referred to in that paragraph, as the case may be, an amount equal to the expenses relating to the storage, safeguard, transport or sale of any such lost property or negotiable instruments, coins or banknotes, as the case may be, incurred by the Holding Company, including any necessary notice or advertisement, and including, in the case of animals, the expenses pertaining to the feeding, watering and tending of such animals, and may retain any amount so deducted as reasonable compensation in respect of the expenses so incurred.
- (11) Any sale of goods in terms of this item shall vest in the purchaser a right of ownership to the goods purchased by him or her, which ownership shall for all purposes be a valid legal title against any claimant.

## **5. Disposal of unclaimed goods or goods in respect of which freight charges have not been paid**

- (1) For the purposes of this item, the expression “goods” does not include any object imported into Namibia and which has to be cleared or entered, or which is subject to any duty, tax or levy, in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964), the Sales Tax Act, 1992 (Act No. 5 of 1992) or the Additional Sales Levy Act, 1993 (Act No. 11 of 1993), as the case may be.

**[The Sales Tax Act 5 of 1992 and the Additional Sales Levy Act 11 of 1993 have been replaced by the Value-Added Tax Act 10 of 2000. Section 88(2) of Act 10 of 2000 states: “No reference in any other law to sales tax or to additional sales levy shall be construed as a reference to tax under this Act.”]**

- (2) Any object referred to in paragraph (1), and which is not goods as defined in that paragraph, shall as soon as practicable after it has come into the possession of the Holding Company, be handed over by the Holding Company to the Minister of Finance.
- (3) When any goods other than lost property referred to in item 4 have come into the possession of the Holding Company for the purpose of transport or for any other purpose, and such goods are not claimed by the rightful owner thereof or by any other person who appears to the Holding Company to be entitled thereto, or when a declaration in a consignment note in connection with the nature or mass of such goods is false in any material respect, or when the ownership of the goods is uncertain in consequence of the incorrect or incomplete address of the consignee, the Holding Company shall, if the rightful owner or such other person is known, cause a written notice in such form and manner as the Holding Company may determine, to be served upon such rightful owner or other person, requiring him or her to remove such goods from any premises of the Holding Company, and within the period of time or before the date, specified in such notice.
- (4) If the owner or other person referred to in paragraph (3) is not known or the notice contemplated in that paragraph cannot be served on him or her, or if he or she does not comply with a notice served in terms of that paragraph, as the case may be, the Holding Company may -
  - (a) in anticipation of the sale of the goods concerned, place such goods in a warehouse, absolving itself from any liability in respect thereof;
  - (b) sell the goods concerned by public auction;
  - (c) pay, subject to paragraph (9), the proceeds of the sale of the goods to any person entitled thereto.
- (5) If perishable goods accepted by the Holding Company for transport are, on arrival at their destination, in such a condition that in the opinion of the Holding Company such goods are or

will become worthless, or have or will have no commercial value, or are or will pose a danger to health, and if the owner or person entitled to the goods has not claimed such goods, the Holding Company may, notwithstanding anything in this item, at once proceed to conduct the sale thereof in any manner determined by the Holding Company or, if the goods have in fact become worthless, proceed to destroy such goods.

- (6) If the person who is liable for payment of the freight or any other charge due to the Holding Company in respect of any goods, on written demand made by or on behalf of the Holding Company, fails to pay such freight or any other charge within the period of time specified in such demand, the Holding Company may detain the whole or any part of such goods or, if such goods have been removed, any other goods of such person which are then in, or may thereafter come into, the Holding Company's possession.
- (7) Paragraphs (9) and (10) of item 4 shall, subject to paragraph (8) of this item, mutatis mutandis apply to any goods in the possession of the Holding Company, paragraph (6) of item 4 shall mutatis mutandis apply to the Holding Company and paragraph (11) of item 4 shall mutatis mutandis apply to any person who has bought any such goods.
- (8) If the whereabouts of the owner of any goods sold by the Holding Company in terms of any provision of this item, or of any other person who may be entitled to the proceeds of the goods so sold, is known to the Holding Company, the Holding Company may, subject to paragraph (9), pay such proceeds to such owner or to such other person.
- (9) Paragraph (10) of item 4 shall mutatis mutandis apply to any payment made to any person in terms of paragraph (4)(c) or (8), as the case may be, of this item.

## 6. Sale of intoxicating liquor and other articles

- (1) The Holding Company may, subject to the Liquor Ordinance, 1969 (Ordinance No. 2 of 1969), which apply to the Holding Company by virtue of section 18 of this Act, in any refreshment room or bar on a train, on an aircraft or on a bus conveying passengers, or at any other place under the control of the Holding Company, sell intoxicating liquor with or without other refreshments or articles.

**[The Liquor Ordinance 2 of 1969 has been replaced by the Liquor Act 6 of 1998.]**

- (2) The sale of intoxicating liquor and other refreshments or articles in terms of this item, whether by the Holding Company itself or by any concessionary referred to in paragraph (3) or (4), shall be subject to this item and to any direction issued by the Minister under section 8 in respect thereof.
- (3) The Holding Company may upon such conditions as it may consider appropriate, but subject to paragraph (4), grant to any person a concession to conduct or undertake, at any place under the control of the Holding Company, any trading activity in which the Holding Company itself may engage in terms of paragraph (1), and may let to such person any land or premises required for such purpose.
- (4) Paragraph (3) shall be deemed to relieve any person to whom a concession under that paragraph has been granted from the obligation to obtain any licence or other authority under the Liquor Ordinance, 1969, (Ordinance No. 2 of 1969), which he or she would by law be required to obtain for the conduct of his or her business at such place.

**[The Liquor Ordinance 2 of 1969 has been replaced by the Liquor Act 6 of 1998.]**

- (5) The Holding Company may, at any airport approved by the Minister in writing, supply to any operator of a passenger air service, intoxicating liquor for consumption by the passengers on board any aircraft used on such a service while it is in flight.
- (6) Nothing in this item shall be construed as exempting the Holding Company from paying customs duties on any intoxicating liquor or goods imported by it for sale at any place under the control of the Holding Company.

- (7) For the purposes of this item, “intoxicating liquor” means intoxicating liquor as defined in section 1 of the Liquor Ordinance, 1969 (Ordinance No. 2 of 1969).

[The Liquor Ordinance 2 of 1969 has been replaced by the Liquor Act 6 of 1998.]

## 7. Telecommunication and electricity supply networks

- (1) Subject to paragraph (2), the Holding Company shall be entitled, for the purpose of any activity in which it may legally engage, to construct and maintain telecommunication and electricity supply networks on any premises or at any place which it occupies for the purpose of any such activity, or between such premises or place and any other premises or place so occupied.
- (2) In the exercising of its powers in terms of paragraph (1), the Holding Company may, subject to paragraph (3), enter upon any land or public road and conduct any excavations that are necessary for the erection of poles and the laying of lines or underground connections, and to erect or lay the necessary poles, cables or wires.
- (3) Notwithstanding paragraph (2) -
- (a) no excavations relating to the erection of poles or the laying of cables or wires referred to in that paragraph, shall be conducted without the prior written permission of the local authority which controls the road concerned;
  - (b) all surface telecommunication cables or wires shall be constructed not less than three metres (or when constructed in or in the immediate vicinity of a town, not less than three comma six five metres) above the ground level unless constructed over a street, road or pathway which may carry traffic, in which event such cables or wires shall be constructed not less than four comma two five metres (or when constructed in or in the immediate vicinity of a town, not less than five comma five metres) above the ground level;
  - (c) all electricity supply networks shall comply with the requirements of all applicable laws; and
  - (d) all cables, wires or connections shall be constructed in such manner as not to obstruct or hinder the free use or enjoyment of any street, road or pathway to a greater degree than is absolutely necessary for the proper construction, placing in service or maintenance of the system.
- (4) The Holding Company shall pay reasonable compensation to any person in respect of damage to property suffered by him or her arising out of the exercising of its powers under this item.

## 8. Notice and institution of claims

- (1) Notwithstanding anything in any other law, but subject to item 1(3) and to paragraph (2) of this item, no claim against the Holding Company arising from the transportation of goods by the Holding Company or its transport services shall be enforced, and the Holding Company shall not be liable in respect of such claim, unless a notice in writing of the intention to institute such claim has been submitted by hand or registered post to the Holding Company at its registered office within a period of 90 days after the cause of action concerned arose.
- (2) Notwithstanding paragraph (1) -
- (a) if a competent court, on application made to it not later than the expiration of the relevant period of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), is satisfied that the Holding Company shall not be prejudiced by reason of the failure by the plaintiff or applicant to submit a notice as required by, and within the period of 90 days referred to in, that paragraph, and that the plaintiff or applicant could not reasonably have been expected to so have submitted such notice within such period of time, such court may, on good cause shown, grant the plaintiff or applicant special leave to institute such claim, and the court may make such order as to the costs of the application as it may consider reasonable; and

- (b) this item shall not apply to any operation of the Holding Company in relation to its international carriage by air of passengers or goods as contemplated in the Carriage by Air Act, 1946 (Act No. 17 of 1946).

## Schedule II

### LAWS REPEALED

#### *Section 19*

| No. and year of law   | Short title  | Extent of repeal   |
|---|--|--|
| Act No. 21 of 1987  | National Transport Corporation Act, 1987                   | The whole  |
| Proclamation AG. No. 20 of 1989   | National Transport Corporation Amendment Proclamation 1989 | The whole  |
| Act No. 6 of 1992   | Labour Act, 1992   | In so far as it in the Schedule relates to sections 1 and 44 of Act No. 21 of 1987 |
| <b>[The Labour Act 6 of 1992 has been replaced by the Labour Act 11 of 2007.]</b> |  |  |
| Act No. 2 of 1994   | Namibian Ports Authority Act, 1994                         | In so far as it in Schedule II relates to section 1 of Act No. 21 of 1987          |