



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 521 Cape Town

27 November 2008

No. 31650

THE PRESIDENCY

No. 1285

27 November 2008

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 38 of 2008: Legal Succession to the South African Transport Services Amendment Act, 2008.



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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President.)
(Assented to 25 November 2008.)*

ACT

To amend the Legal Succession to the South African Transport Services Act, 1989, so as to delete and substitute certain definitions; to rename the South African Rail Commuter Corporation Limited to the Passenger Rail Agency of South Africa; to regulate the objects and powers of the Agency; to make provision for the transfer of Long Haul Passenger Rail Services and Long Distance Bus Services from the Company to the Agency; and to effect certain technical amendments; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 9 of 1989, as amended by section 6 of Act 52 of 1991 and section 1 of Act 47 of 1992

1. Section 1 of the Legal Succession to the South African Transport Services Act, 1989 (hereinafter referred to as the principal Act), is hereby amended—
 - (a) by the substitution for the definition of “Corporation” of the following definition:

“ ‘**Corporation**’ means the [**South African Rail Commuter Corporation Limited**] Passenger Rail Agency of South Africa established in terms of section 22;”
 - (b) by the deletion of the definition of “**local government body**”; and
 - (c) by the substitution for the definition of “transport authority” of the following definition:

“ ‘**transport authority**’ means—

 - (a) any Department of State; or
 - (b) a planning authority as defined in section 1 of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000).”

Amendment of section 10 of Act 9 of 1989, as amended by section 8 of Act 52 of 1991

2. Section 10 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) The South African Railways and Harbours Sick Fund constituted in terms of regulations promulgated under section 32(1)(g) of the Railways and Harbours Service Act, 1960, shall continue in existence as **[the Company’s]** a medical scheme under the name Transmed or such other name as the Board of Trustees of Transmed may adopt.”; and

(b) by the deletion of subsections (10), (11) and (12).

Repeal of section 15 of Act 9 of 1989

3. Section 15 of the principal Act is hereby repealed.

Amendment of section 22 of Act 9 of 1989, as amended by section 15 of Act 52 of 1991

4. Section 22 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) On the date referred to in section 3(1), a legal person, which shall be called the **[South African Rail Commuter Corporation Limited]** Passenger Rail Agency of South Africa, shall be established.”.

Substitution of section 23 of Act 9 of 1989, as amended by section 16 of Act 52 of 1991 and section 3 of Act 47 of Act 47 of 1992

5. The following section is hereby substituted for section 23 of the principal Act:

“Objects and powers of Corporation

23. (1) The main object and the main business of the Corporation are to—

(a) ensure that, at the request of the Department of Transport, rail commuter services are provided within, to and from the Republic in the public interest; and

(b) provide, in consultation with the Department of Transport, for long haul passenger rail and bus services within, to and from the Republic in terms of the principles set out in section 4 of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000).

(2) The second object and the secondary business of the Corporation is to generate income from the exploitation of the assets acquired by it.

(3) In carrying out its objects and business, the Corporation shall have due regard to key government social, economic and transport policy objectives.

(4) Without derogating from the generality of the provisions of subsections (1) and (2), the Corporation may—

(a) enter into contracts and perform any other legal acts;

(b) acquire or alienate movable and immovable property or rights therein;

(c) acquire or alienate rights in corporeal things and deal therewith in any other manner;

(d) borrow, lend or invest money;

(e) make, draw, issue, execute, accept, endorse, discount, buy or sell financial instruments, including promissory notes, bills of exchange, debentures, stock, shares and any other type of negotiable or transferable document, and may acquire or alienate them in any other manner;

(f) enter into indemnities, guaranties and suretyships and may secure payment in terms thereof in any manner;

(g) make donations;

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- (h) grant service benefits of any nature, including pension and incentives schemes, to members of the Board of Control and employees;
- (i) conclude partnership contracts and may participate in joint ventures;
- (j) form companies or acquire any interest therein and may finance any company for the purposes of realising or advancing its objects, and may transfer all or any portion of its business, assets and liabilities to such companies; and
- (k) generally, to do anything or perform any other act, whether within or outside the Republic, that may assist the Corporation in achieving its objects.”

Amendment of section 24 of Act 9 of 1989, as amended by section 17 of Act 52 of 1991 and section 4 of Act 47 of 1992

6. Section 24 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) one of the members of the Board of Control shall be nominated by the [Association of Regional Services Councils] South African Local Government Association recognised in terms of section 2(1)(a) of the Organised Local Government Act, 1997 (Act No. 52 of 1997); and”.

Insertion of section 25A in Act 9 of 1989

7. The following section is hereby inserted in the principal Act after section 25:

“Transfer of assets relating to passenger services

25A. (1) The transfer of long-distance passenger rail services and long-distance bus services from the Company to the Corporation shall be concluded by 31 March 2009.

(2) All liabilities, rights and obligations of whatever nature relating to the assets and business operations that form part of the transfer referred to in subsection (1), shall be transferred from the Company to the Corporation by the date referred to in that subsection.

(3) Notwithstanding anything to the contrary in any other law contained, the Company is exempted from applying to the relevant authority for the approval of any subdivision of land necessary in order to effect the transfer contemplated in subsection (1): Provided that—

- (a) the Company, after consultation with the Corporation, shall notify the relevant authority in writing of each proposed subdivision and at the same time shall submit to the relevant authority a plan setting out the proposed subdivision;
- (b) the relevant authority shall inform the Company in writing within 30 working days from the receipt of the notice referred to in paragraph (a) of any objection or comment the authority may have received regarding the proposed subdivision, failing which the relevant authority shall be deemed to consent to such subdivision; and
- (c) the Company shall consider any objection and comment received in terms of paragraph (b) prior to submitting the plans, diagrams and records required by the Surveyor-General or a deed of transfer or certificate of registered title in respect of the subdivided portion to the Registrar of Deeds concerned for registration in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937).”

Amendment of section 31 of Act 9 of 1989, as amended by section 22 of Act 52 of 1991, section 7 of Act 47 of 1992 and section 2 of Act 43 of 1995

8. Section 31 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 5

“The provisions of sections 13, 17, 18 and 19 of, and of items 5 to 9 and 12 of Schedule 1 to, this Act shall apply *mutatis mutandis* to the Corporation; provided that—”; and

(b) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 10

“(a) the reference in sections 13 (7), 17, 18 (1) and 19 (1) to the Minister shall be interpreted as a reference to the Minister of Transport;”.

Amendment of section 33 of Act 9 of 1989

9. Section 33 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 15

“(a) to record the transfer of immovable property or real rights in terms of sections 3, 9, **[and]** 25 and 25A;”.

Substitution of word in Act 9 of 1989

10. The principal Act is hereby amended—

(a) by the substitution for the word “Company”, wherever it occurs in section 7, 20 of the expression “Company and the Corporation”; and

(b) by the substitution for the word “Company”, wherever it occurs in section 14(1), excluding section 14(1)(a)(iii), and items 5 to 9 and 12 of Schedule 1, of the expression “Company or the Corporation, as the case may be.”.

Short title and commencement 25

11. This Act is called the Legal Succession to the South African Transport Services Amendment Act, 2008, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.