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THE LAND TRANSPORT REGULATORY AUTHORITY ACT, 2019

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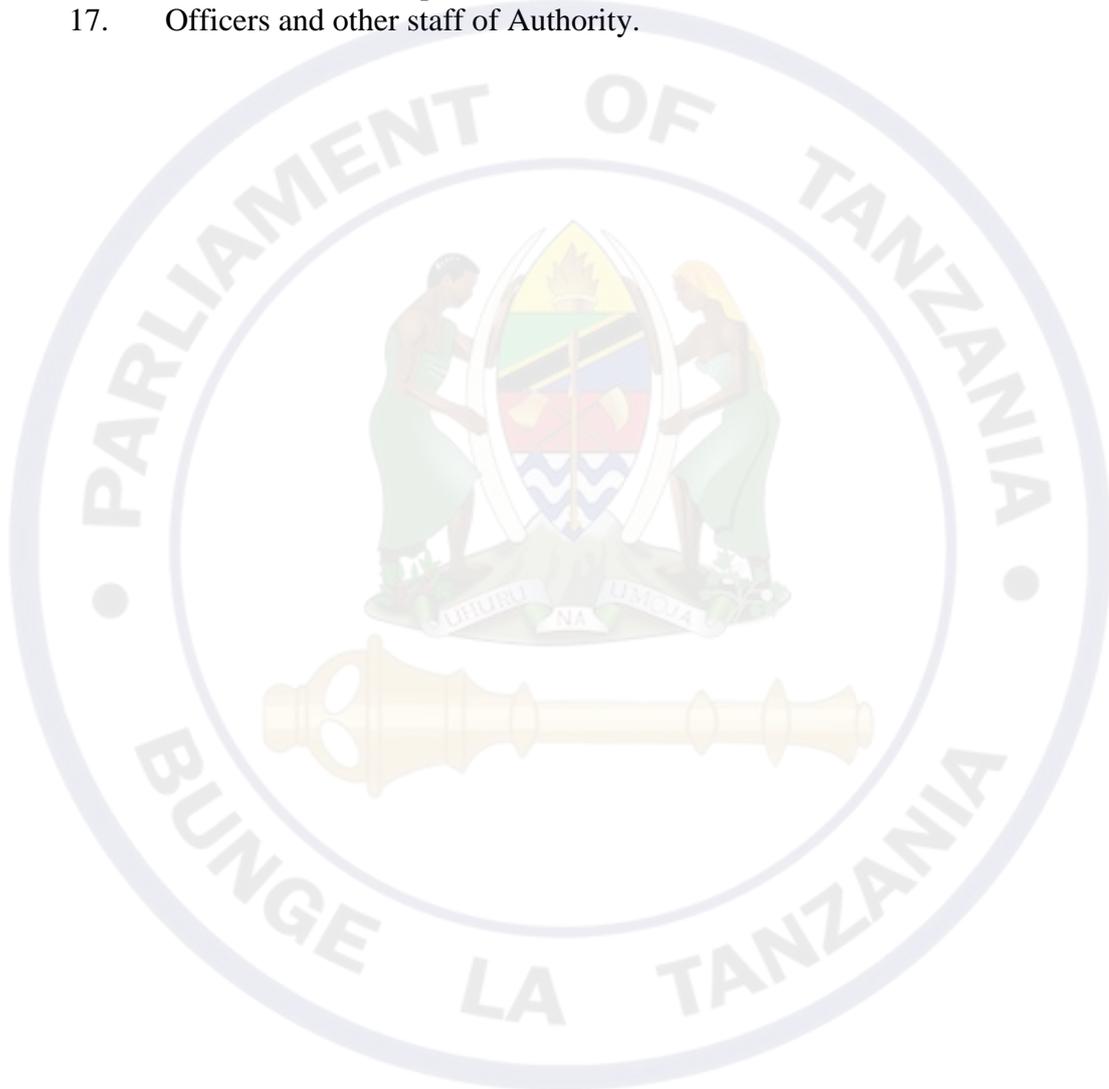
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THE UNITED REPUBLIC OF TANZANIA



No. 3 OF 2019

I ASSENT

JOHN POMBE JOSEPH MAGUFULI
President

[13th February, 2019]

An Act to make provisions for the establishment of Land Transport Regulatory Authority, to regulate land transport sector, to repeal the Surface and Marine Transport Authority and for related matters.

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title and commencement

1. This Act may be cited as the Land Transport Regulatory Authority Act, 2019 and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

Application

2. This Act shall apply to Mainland Tanzania.

Interpretation

3. In this Act unless the context requires otherwise-
“Authority” means the Land Transport Regulatory Authority or in its acronym “LATRA” established under section 4;

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“Board” means the Land Transport Regulatory Authority Board established under section 7;

“class licence” means a licence which is granted to multiple regulated suppliers under sector legislation on standard terms and conditions;

“commercial road transport” means transport by public service vehicle or goods vehicle;

“Commission” means the Fair Competition Commission established under the Fair Competition Act;

“Committee” means the committee of the Board established under section 10;

“Council” means the LATRA Consumer Consultative Council established under section 29;

“crew” includes driver, conductor, and any other employee of the licensee on regulated sector while en-route;

“Director General” means the Director General of the Authority appointed under section 15;

“goods vehicle” means a motor vehicle constructed or adapted for use for the carriage of goods or a trailer so constructed or adapted, whether used or constructed or adapted solely for that purpose or not;

“land transport” includes commercial road transport, rail transport, commercial underground or cable transport;

“long term licence” means a licence issued for the duration of five years or more in terms of this Act;

“Minister” means the Minister responsible for land transport;

“multiple regulated suppliers” means more than one company providing regulated services exclusively in specified area or route;

“Public Register” means the Public Register of the Authority kept by the Authority pursuant to section 25;

“public service vehicle” means a motor vehicle which carries or is intended to carry passengers for hire or reward, whether used or constructed solely for that

purpose or not;

“regulated goods” means any goods produced, supplied or offered for supply or for use in a regulated sector and includes any goods the Authority declares under this Act;

“regulated sector” means rail transport, commercial road transport, commercial underground and cable transport;

“regulated services” means any services supplied or offered for supply in a regulated sector and includes services which the Authority declares to be such services under this Act;

“regulated supplier” means any person engaged in activities in or in connection with a regulated sector and includes any person whom the Authority declares under this Act to be such supplier;

“rolling stock” means a vehicle that operates on or uses the rail track;

“sector legislation” means the Transport Licensing Act, the Railways Act and any other legislation for regulated sector;

“sector Minister” means the Minister responsible for a regulated sector;

“sub-office” means office of the Authority other than its head office; and

“Tribunal” means the Fair Competition Tribunal established under the Fair Competition Act.

Cap. 317
Act No. 10
of 2017

Cap. 285

PART II

LAND TRANSPORT REGULATORY AUTHORITY

Establishment
of Authority

4.-(1) There is established a body to be known as the Land Transport Regulatory Authority or in its acronym "LATRA".

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of-

(a) suing and being sued;

- (b) acquiring, holding, investing and alienating movable or immovable property;
- (c) exercising the powers and performing the functions conferred upon it under this Act; and
- (d) entering into any contract or other transaction, and doing or suffering to do all such other acts and things which a body corporate may lawfully perform, do or suffer to be done.

(3) Notwithstanding the preceding provisions of this section, the Attorney General shall have the right, through the Solicitor General, to intervene in any suit or matter instituted by or against the Authority.

(4) Where the Attorney General intervenes in any matter in pursuance of subsection (3), the provisions of the Government Proceedings Act, shall apply in relation to the proceedings of that suit or matter as if it had been instituted by or against the Government;

Provided that, the requirement of ninety days notice of intention to sue the Government as stipulated under the Government Proceedings Act shall not apply where the Attorney General intervenes under this section.

(5) Notwithstanding the provisions of subsection (2), the Authority shall have duty to notify the Attorney General of any impending suit or intention to institute a suit or matter for or against the Authority.

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Functions of Authority

5.-(1) The functions of the Authority shall be-

- (a) to perform the functions conferred on the Authority by sector legislation;
- (b) to issue, renew and cancel permits or licences;
- (c) subject to sector legislation to-
 - (i) establish standards for regulated goods and regulated services;
 - (ii) establish standards for the terms and conditions of supply of the regulated goods and services; and
 - (iii) regulate rates and charges;
- (d) to coordinate land transport safety activities;
- (e) to register crew and certify drivers of regulated

- sector;
- (f) to certify worthiness of rolling stock and road worthiness of public service vehicles and goods vehicles;
 - (g) to monitor the performance of the regulated sectors including-
 - (i) levels of investment;
 - (ii) availability of safe, quality and standards of services;
 - (iii) cost of services;
 - (iv) efficiency of production and distribution of services; and
 - (v) other matters relevant to the Authority;
 - (h) to facilitate resolution of complaints and disputes;
 - (i) to disseminate information about matters relevant to the functions of the Authority;
 - (j) to consult with other regulatory authorities or bodies or institutions discharging functions similar to those of the Authority in Mainland Tanzania or elsewhere; and
 - (k) to perform such other functions as may be conferred on the Authority by this Act or any other law.

(2) In the performance of its functions, the Authority shall not award or cancel a licence having a term of five or more years without prior consultation with the Minister and the relevant sector Minister.

(3) The Minister may, for the purposes of securing the effective performance by the Authority of its functions, give to the Authority directions of a specific or general character.

Duty of
Authority

- 6.** It shall be the duty of the Authority in carrying out its functions to enhance the welfare of Tanzania society by-
- (a) promoting effective competition and economic efficiency of regulated sectors;
 - (b) promoting safety of regulated sectors including consumers of the regulated sectors;
 - (c) protecting the interests of consumers in relation to

- costs, quality and standards of transport services;
- (d) protecting the financial viability of efficient suppliers;
- (e) promoting the availability of regulated services to all consumers including low income, rural and disadvantaged consumers;
- (f) raising public knowledge, awareness and understanding of the regulated sectors including-
 - (i) the rights and obligations of consumers and regulated suppliers;
 - (ii) the ways in which complaints and disputes may be resolved;
 - (iii) the duties, functions and activities of the Authority; and
- (g) taking into account the need to protect and preserve the environment.

PART III

BOARD OF THE AUTHORITY

Establishment
of Board

7.-(1) There is established the Land Transport Regulatory Authority Board which shall be the governing body of the Authority and shall consist of seven members as follows-

- (a) a Chairman to be appointed by the President; and
- (b) six other members to be appointed by the Minister as follows:
 - (i) a law officer nominated by the Attorney General;
 - (ii) five other members appointed from amongst persons with qualifications and experience in transport logistics, law, engineering management, finance or accounts.
- (2) In appointing members of the Board under subsection (1), due regard shall be given to gender.
- (3) The Director General shall be the secretary to the Board.
- (4) In order to maintain impartiality and for the

purpose of avoiding conflict of interest, a person shall not be qualified for appointment as a member of the Board if owing to the nature of the office he holds, he is likely to exert influence on the Authority.

(5) The provisions of the First Schedule to this Act shall have effect as to the tenure of office of members, remuneration, proceedings of the Board and other matters in relation to the Board.

Functions of
Board

8.-(1) The Board shall oversee the management in the performance of the functions of the Authority, and shall ensure adherence to the governing laws and procedures.

(2) Without prejudice to the generality of subsection (1), the Board shall-

- (a) provide strategic guidance and formulate policies for operation and management of the Authority;
- (b) conduct managerial oversight and review the activities and performance of management of the Authority;
- (c) secure and ensure efficient use of resources, including approval of annual work plan, annual budget and supplementary budget;
- (d) approve strategic and investment plans and operations manual;
- (e) evaluate the performance of the entire management team and take necessary measures;
- (f) approve performance reports of the Authority;
- (g) approve any changes in salaries and conditions of service for employees;
- (h) approve code of conduct;
- (i) approve and oversee financial regulations and staff rules;
- (j) approve the disposal of capital items; and
- (k) do any other functions as it may deem fit for the achievement of the objectives of the Authority.

Powers of Board

9.-(1) The Board shall, in respect of the performance of the functions of the Authority, have powers to-

- (a) approve projects, subject to other relevant laws for the purpose of the Authority, not included within a programme or annual work plan and budget;
- (b) consider legislative proposal relating to land transport services and recommend their enactment to the Minister; and
- (c) exercise disciplinary powers over management employees.

(2) The Board may give directions to the Director General in relation to the carrying out of any of the functions of the Authority.

Committees of Board

10. The Board may, for the purpose of effective performance of its functions, form and appoint from among its members, such number of committees as it deems necessary for carrying out specific functions as the Board may determine.

Delegation of functions and powers of Board

11.-(1) The Board may, subject to such conditions or restrictions as it deems necessary, delegate to any committee of the Board any functions or powers vested in it by this Act or any other written law, except powers to borrow or lend money, prescribe fees, rates, charges and commissions.

(2) Any power or function so delegated shall be exercised or performed by the committee in the name and on behalf of the Board.

(3) The Board may exercise any power conferred upon it or perform any function under this Act or any other written law, notwithstanding the delegation of the power or function made under such written law.

Code of conduct

12.-(1) The Authority shall prepare a code of conduct to be published in the *Gazette* prescribing standards to be observed by members of the Board and

employees of the Authority in the performance of their duties.

(2) A member of the Board or employee of the Authority who fails to comply with the code of conduct commits an offence and shall be liable to disciplinary action.

Conflict of
interest

13.-(1) Where at any time a member of the Board has a conflict of interest in relation to-

- (a) any matter before the Board for consideration or determination; or
 - (b) any matter the Board could reasonably expect might come before it for consideration or determination,
- that member shall immediately declare the interest held by him to members of the Board and refrain from taking part in the consideration or determination of the matter.

(2) Upon the Board becoming aware of any conflict of interest it shall make a determination as to whether the conflict is likely to interfere with the proper and effective performance of the functions and duties of the member and the member with the conflict of interest shall not vote on the matter under consideration.

(3) Where the Board determines that the conflict is likely to interfere with the member's proper and effective performance, competence or integrity, such member shall resign except if within the next thirty days the member eliminates the conflict to the satisfaction of the Board.

Cessation of
membership

14. A member of the Board or an employee of the Authority shall not, during a period of twelve months after the expiration or termination of the term of office or service-

- (a) enter into any contract of employment with, or contract for the supply of services to any person or organisation under the jurisdiction of the Authority; and
- (b) acquire or hold any financial interest, whether as an

employee, partner, shareholder, officer or joint venture, in any business or organisation supplying services to any person or organization under the jurisdiction of the Authority.

PART IV

ADMINISTRATION AND MANAGEMENT OF THE AUTHORITY

Director General

15.-(1) There shall be the Director General of the Authority who shall be the chief executive officer of the Authority and responsible to the Board for the proper administration and management of the functions and affairs of the Authority.

(2) The Director General shall be appointed by the President on such terms and conditions as provided for in the scheme of service.

(3) A person shall not be qualified for appointment as Director General unless he-

- (a) is a holder of at least a post graduate degree from a recognized university or its equivalence;
- (b) possesses at least eight years experience in senior managerial position in one or more of the field of management, law, economics, finance, engineering or such other qualification as may be required; and
- (c) has knowledge and experience of the transport sector.

(4) The Director General shall be appointed to serve for a term of four years renewable once on such terms and conditions as shall be set out in the letter of his appointment or as may be determined by the Board upon approval by the Minister.

Establishment of departments, units and sections

16.-(1) The Board may, for the purpose of facilitating performance of its functions, establish departments, units and sections as may be determined by the Board.

(2) There shall be employed by the Board, departmental directors each with responsibilities for a particular function.

Officers and
other staff of
Authority

17.-(1) There shall be employed by the Board such number of officers, staff and employees of the Authority in such categories and levels as may be necessary for the efficient discharge of the functions of the Authority and upon such terms and conditions as may be determined by the Board.

(2) The Authority may appoint consultants and experts of the Authority in various disciplines on such terms and conditions as the Authority may determine.

(3) The Authority shall, in recruiting employees, comply with the competitive selection procedures.

PART V

POWERS AND PROCEEDINGS OF THE AUTHORITY

General
powers

18.-(1) Subject to the provisions of this Act, the Authority shall have powers to do all things which are necessary for or in connection with the performance of its functions or to enable it to discharge its duties.

(2) Without limiting the powers conferred under subsection (1), the Authority shall have-

- (a) such powers as may be conferred on it by sector legislation; and
- (b) the power to appoint an administrator to manage the business of a regulated supplier whose long term licence has been cancelled.

Powers to set
rates and
charges

19.-(1) Subject to the provisions of sector legislation and licences granted under sector legislation, the Authority shall set and carry out regular review of rates and charges.

(2) In setting rates and charges, the Authority shall have regard to-

- (a) the costs of making, producing and supplying the goods or services;
- (b) the desire to promote competitive rates and attract the market;

- (c) any relevant benchmarks including international benchmarks for prices, costs and return on assets in comparable industries;
- (d) the financial implications of the determination;
- (e) the consumer and investor interest;
- (f) the return on assets in the regulated sector; and
- (g) any other factors the Authority considers relevant.

(3) The Authority shall publish in the *Gazette* all the rates and charges approved by the Board.

Power to obtain information documents and evidence

20. Where the Authority has reason to believe that a person is capable of supplying information, producing a document or giving evidence that may assist in the performance of any of its functions, a member of the Authority may, by summons signed by the Director General served on that person, require that person-

- (a) to furnish the information in writing signed by him, or in the case of a body corporate, signed by a competent officer of the body corporate;
- (b) to produce the document to the Authority; or
- (c) to appear before the Authority to give evidence orally.

Powers to hold inquiry

21.-(1) Where it considers it necessary or desirable for the purpose of carrying out its functions, the Authority shall conduct an inquiry.

(2) Subject to subsection (1) the Authority shall, before exercising a power to-

- (a) grant, renew, suspend or cancel exclusive or class licence; and
- (b) make a decision on issues of competition in nature in the regulated sector,

conduct an inquiry in accordance with this section.

(3) Where the Minister directs by notice in writing that an inquiry be conducted, and specifies the subject matter of the inquiry, the Authority shall conduct the inquiry.

Competition
matters

22.-(1) In carrying out its functions and exercising its powers under this Act and under sector legislation in relation to particular markets for regulated services, the Authority shall take into account-

- (a) whether the conditions for effective competition exist in the market;
- (b) whether any exercise by the Authority is likely to cause any lessening of competition or additional costs in the market and is likely to be detrimental to the public; and
- (c) whether any such detriments to the public is likely to outweigh any benefit to the public resulting from the exercise of the powers.

(2) The Authority shall deal with all competition issues which may arise in the course of the discharge of its functions, and may investigate and report on those issues and make appropriate recommendations to the Commission or any other relevant authority in relation to-

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- (a) any contravention of the Fair Competition Act, or any other written law;
- (b) actual or potential competition in any market for regulated services; and
- (c) any detriments likely to result to the members of the public.

Delegation of
powers

23.-(1) Subject to subsection (3), the Authority may delegate to an employee of the Authority, either generally or otherwise as provided by the instrument of delegation, any of its powers.

(2) Subject to the provisions of sub-section (1), the delegated power shall be exercised in accordance with the instrument of delegation.

(3) Notwithstanding the powers conferred to the Authority to delegate, the Authority shall not delegate powers to-

- (a) grant, renew, suspend or cancel a licence of a period of five years or more;
- (b) make any rule or declaration;

- (c) fix the method of calculating and reviewing of rates and charges;
- (d) make a decision to hold an inquiry;
- (e) adopt a report on the results of an inquiry;
- (f) adopt a code of conduct; and
- (g) such other matters as the Minister may, by notice published in the *Gazette*, determine.

Consultation
with
stakeholders

24.-(1) The Authority shall, before the beginning of each financial year, establish an annual program for consultation with stakeholders for the purpose of effectively carrying out its functions.

(2) Subject to provisions of subsection (1), the Authority shall publish the program in the Public Register.

(3) The Authority shall include in its annual report, a report on the implementation of its consultation program during the year covered by the report.

(4) For the purposes of this section, it shall be the duty of the Authority to establish and identify the persons, organizations and institutions to be consulted.

Public Register

25.-(1) There shall be a Public Register published by the Authority which shall be available for public inspection.

(2) The Board shall from time to time determine the categories of decisions and information which would be placed on the Public Register.

(3) The Authority may exclude from the Public Register any document or part of a document which is confidential under this Act.

PART VI

REVIEW AND APPEALS PROCEDURES

Review Panel

26.-(1) The Board shall establish a Review Panel which shall consist of-

- (a) two persons who have experience in law for at least ten years; and
- (b) two persons who are graduates of a recognized

university, each having at least ten years of experience in one or more of the fields of economics, finance, engineering, transport or management.

(2) Subject to subsection (1), the Board shall appoint the members of the Review Panel for a term of not exceeding five years on such terms and conditions as the Board shall deem fit.

(3) The Review Panel shall be responsible for reviewing decisions of the management of the Authority and submit to the Board for determination.

Application for
review

27-(1) Any person aggrieved by any decision made by the Authority may, within fourteen days after receipt of the decision, apply to the Authority for it to review the decision.

(2) The Board may make rules prescribing procedures governing review under this Act.

Appeal to Fair
Competition Tribunal
Cap.285

28-(1) Any person aggrieved by the decision of the Board may appeal to the Fair Competition Tribunal in accordance with the Fair Competition Act.

(2) Notwithstanding subsection (1), the grounds of appeal shall be the following:

- (a) the decision made was not based on evidence produced;
- (b) there was an error in law;
- (c) the procedures and other statutory requirements applicable to the Authority were not complied with and the non-compliance materially affected the determination; and
- (d) the Authority did not have power to make the determination.

PART VII

CONSUMER CONSULTATIVE COUNCIL

Establishment
of Council

29-(1) There is established a council to be known as the LATRA Consumer Consultative Council.

(2) The Council shall consist of seven members appointed by the Minister from amongst individuals representing consumers' interests.

(3) Before making the appointment of members pursuant to subsection (2), the Minister shall, by notice published in any newspaper circulating widely in the country, invite nominations for appointments and having received them publish the names and call for comments, objections or representations from the public concerned.

(4) In nominating and appointing persons for the Council, the Minister shall have regard to the desirability of the Council as a group having knowledge and understanding of the interests of consumers and that of the regulated services, including the interests of-

- (a) low income, rural and disadvantaged persons;
- (b) industrial and business users; and
- (c) Government and community organizations.

(5) In appointing members of the Council under this section, due regard shall be given to gender.

(6) In the performance of its functions, the Council shall regulate its own proceedings.

(7) After the members are appointed under subsection (2) they shall meet to elect their Chairman.

Tenure of
Council

30.-(1) The tenure of the Council members shall be as follows-

- (a) two members shall hold office for a term of four years; and
- (b) five members shall hold office for a term of three years;

(2) The Council members shall not serve for more than two consecutive terms.

Functions and
powers of
Council

31.-(1) The functions of the Council shall be-

- (a) to represent the interests of consumers by making submissions to, providing views and information to and consulting with the Authority, Minister and regulated sector Ministers;
- (b) to receive and disseminate information and views on

matters of interest to consumers of regulated goods and services;

- (c) to establish regional and regulated sector consumer committees and consult with them;
- (d) to consult with industry, Government and other consumer groups on matters of interests to consumers of regulated goods and services;
- (e) to establish local and sector consumer committees and consult with them; and
- (f) to conduct research on the matters affecting interest of consumers of a regulated sector.

(2) The Council shall maintain its own Secretariat.

(3) The Council shall have power to regulate its own procedure in relation to the performance of its business.

(4) Subject to subsections (1), (2) and (3), the Chairman of the Council in consultation with the members may convene meetings at least four times a year.

(5) The Chairman of the Council shall preside at meetings of the Council and in his absence, members present may appoint one of their member to preside at the meeting.

(6) The quorum at a meeting of the Council shall be half of the number of all the members present.

Funds of
Council

32.-(1) The Fund and resources of the Council shall be-

- (a) such sums as shall be appropriated from the funds of the Authority for the purposes of the Council;
- (b) grants, donations or bequests; and
- (c) any other monies legally acquired or received by the Council for the execution of its functions.

(2) The Council shall, upon approval by the Minister, prescribe procedure for enabling regulated suppliers to contribute to the budget of the Council.

(3) The Council shall keep books of accounts and maintain proper records of its operations in accordance with commercial accounting standards.

(4) The accounts of the Council shall, at the end of

each financial year, be audited by the Controller and Auditor General or any other person appointed by him.

(5) The Council shall prepare an Annual Report in relation to each year ended 30th June and submit it to the Authority before 31st December of the following year.

(6) The Annual Report shall provide detailed information regarding the activities of the Council during the previous year ended 30th June, and any additional information requested by the Authority within 28 days of its receipt.

(7) Subject to subsection (5), the Annual Report of the Council shall include the financial statements of the Council for the immediate preceding financial year and the auditor's report based on the aforementioned financial statements.

(8) The Council shall prepare a budget and submit to the Authority for approval before the end of each financial year for the following financial year showing estimates of its receipts and expenditures for the following financial year.

(9) At the Authority's request the Council shall commission its auditors to assess and report on the extent to which the budget represents a fair and reasonable projection of the income and expenditure of the Council for the relevant year and shall submit that report to the Authority.

PART VIII

COMPLAINTS HANDLING AND DISPUTE RESOLUTION

Complaints
handling

33.-(1) Where a complaint is referred to, or otherwise comes to the attention of the Authority, and it appears to the Authority that-

- (a) the complainant has an interest in the matter to which the complaint relates; and
 - (b) the complaint is not frivolous or vexatious,
- the Authority shall investigate the matter.

(2) Where it appears to the Authority at any time during or after its investigation that the supplier has not

considered the complaint or has not considered it adequately, the Authority may refer the complaint to the supplier with a directive that the supplier should consider or reconsider the complaint.

(3) Where it comes to the knowledge of the Authority at any time during or after its investigation that the supplier has considered the matter but the complainant is not satisfied with the decision, the Authority shall handle the complaint in accordance with this section.

(4) The Authority shall investigate the complaint and attempt to resolve it amicably, and in the event it cannot be resolved, the Authority shall present its findings and recommendations to the Board.

(5) The Board shall make a decision on the complaint within the prescribed time.

(6) Any party aggrieved by the decision of the Board may, within prescribed time, appeal to the Fair Competition Tribunal.

Orders of
Board

34.-(1) Subject to section 33, the Board may make an order-

- (a) requiring a party to pay a certain amount of money;
- (b) requiring a party to supply goods or services for specified periods;
- (c) requiring a party to supply goods or services on specified terms and conditions;
- (d) requiring a party to pay the costs of another party or of a person appearing at the hearing or producing documents;
- (e) dismissing a complaint;
- (f) imposing fines and or refunds;
- (g) requiring specific performance;
- (h) setting up an escrow fund;
- (i) appointing a trustee; and
- (j) such other relief as may be deemed reasonable and necessary.

(2) The orders of the Board under this section shall be enforceable as orders of the High Court.

PART IX
FINANCIAL PROVISIONS

Funds of
Authority

35.-(1) The funds and resources of the Authority shall consist of-

- (a) fees collected by the Authority including fees payable for the grant and renewal of licences;
- (b) levies collected from regulated suppliers;
- (c) all other payment or property due to the Authority in respect of any matter incidental to its functions;
- (d) any grants, donations, bequests or other contributions made to the Authority; and
- (e) any other monies legally acquired or received by the Authority for the execution of its functions.

(2) The Authority may, by regulations made under this Act, require regulated suppliers to pay annual levies to the Authority calculated as a percentage of the revenues of regulated suppliers from the supply of regulated goods and services.

(3) An annual levy payable under subsection (2) shall not exceed one percent of the gross operating revenue of a regulated supplier from the supply of regulated goods and services.

(4) The percentage of an annual levy payable under subsection (2) may differ between different regulated sectors.

(5) The Authority shall not accept any grant or donation from a regulated supplier.

Financial year

36. The financial year of the Authority shall be the period of one year ending on 30th June.

Accounts and
audit

37.-(1) The Authority shall keep proper books of account and maintain proper records of its operation in accordance with public sector accounting standards and or other standards approved by the national accounting standards setting board.

(2) The accounts of the Authority may at any time

and shall, at the end of each financial year, be audited by the Controller and Auditor General or any other person appointed by him.

(3) The Authority shall keep proper books and audit records of accounts of the income, expenditure and assets of the Authority.

(4) After the end of each financial year, the Authority shall submit to the Controller and Auditor General the accounts of the Authority together with-

- (a) a statement of financial performance during the year;
- (b) a statement of the financial position of the Authority on the last day of that year;
- (c) a statement of change in equity during the year;
- (d) statement of comparison of budget and actual amounts; and
- (e) notes, comprising of a summary of significant accounting policies and other explanatory notes.

Annual report

38.-(1) The Authority shall cause to be prepared and submitted to the Minister within six months after the close of each financial year an annual report detailing general activities and operation of the Authority during that year.

(2) The annual report shall provide detailed information regarding the exercise of the functions and powers of the Authority during the year to which it relates and shall include-

- (a) a copy of the audited accounts of the Authority;
- (b) a copy of any other report of the Controller and Auditor General carried out during the year to which the Annual Report relates; and
- (c) such information and other material as the Authority may be required by this Act or the regulations to include in the Annual Report.

Budget

39.-(1) Before the end of financial year, the Authority shall prepare a budget for the following financial year, showing estimates of its receipts and expenditure for the following financial year.

(2) Subject to the provisions of subsection (1), the Authority shall inform the Minister of its budget for the following financial year by submitting a copy to the Minister for information.

(3) Where the Minister so requests prior to the commencement of the following financial year, the Authority shall commission the Authority's auditor to assess and report on the extent to which the budget represents a fair and reasonable projection of the income and expenditure of the Authority for the relevant year.

(4) The Authority shall deliver to the Minister a copy of any report prepared pursuant to subsection (3) as soon as possible after the Authority receives it.

(5) If the Authority's Auditor reports that the budget does not represent a fair and reasonable projection of income and expenditure, the Minister may before the commencement of the financial year, require the Authority to revise the budget to correct the deficiencies.

PART X GENERAL PROVISIONS

Compliance
orders

40.-(1) Where the Authority is satisfied that a person has committed or is likely to commit an offence against this Act or sector legislation it may make a compliance order under this section.

(2) Any person against whom a compliance order is made shall comply with the order.

(3) A compliance order may require a person to refrain conduct which is in contravention of the provisions of this Act or sector legislation or to take actions required to be taken in order to comply with this Act or sector legislation.

(4) A compliance order shall be made in writing specifying the grounds for its making and shall be enforceable as an injunction of the High Court.

(5) A copy of a compliance order shall be placed on the Public Register and a copy shall be served on the person against whom it is made.

(6) Notwithstanding the provisions of any law to the contrary, where an order or a certified certificate is produced or submitted to the High Court, the order or certificate shall, unless where the contrary intention appears, be conclusive proof of its making by the High Court and of the facts to which it relates.

Rules and
declarations

41.-(1) The Authority may, with the prior approval of the Minister, make rules with respect to-

- (a) code of conduct;
- (b) records to be kept, including the form and content of accounting and business records and information and documents to be supplied to the Authority by regulated suppliers;
- (c) conduct in connection with the production, distribution and supply of regulated goods and services;
- (d) complaints handling procedures;
- (e) rates and charges for regulated goods and services; and
- (f) such other matters as the Authority considers necessary or desirable to give effect to this Act;

(2) Any person who contravenes or fails to comply with rules made under this section, commits an offence and on conviction shall be liable to a fine not exceeding three million shillings.

(3) Notwithstanding other functions upon which the Authority is empowered to perform, the Authority may, upon consultation with the Minister, make declaration prescribing various requirements to be observed under this Act.

(4) Without prejudice to the generality of subsection (3) the Authority may make declarations on-

- (a) particular goods or services, or particular classes of goods or services and on regulated goods or services for purposes of this Act;
- (b) particular persons or classes of persons and regulated suppliers for the purposes of this Act; or

(c) particular activities which are in connection with a regulated sector.

(5) Declarations made by the Authority shall not be inconsistent with this Act, sector legislation or subordinate legislation made under this Act or a sector legislation.

(6) A copy of any declaration made under this section shall be placed on the Public Register.

(7) A person who contravenes the requirements as declared under subsections (3) and (4), commits an offence and on conviction shall be liable to a fine not exceeding three million shillings.

Offences

42.-(1) Any person who contravenes or fails to comply with the provisions of this Act, commits an offence and is liable on conviction to a fine not exceeding three million shillings or imprisonment for a term not exceeding two years or to both.

(2) Notwithstanding subsection (1), where an offence is committed by a body corporate, it shall be liable to a fine not exceeding five million.

(3) Any person, who suffers loss or damage as a result of an offence against this Act, may recover by compensation for such loss or damage from the person who committed that offence whether or not that person has been convicted of an offence.

(4) A partner of a firm shall be jointly and severally liable for the acts or omissions of any other partner of the same firm done or omitted to be done in the course of the firm's business.

(5) For the purposes of the provisions of this section, a penalty for non compliance of an order of the Authority shall be a fine which shall be equal to a civil debt.

Compounding
of offences

43.-(1) Notwithstanding the provision of this Act relating to penalties, where a person admits in writing that he has committed an offence under this Act, the Director General may, at any time prior to the commencement of the hearing by a court of competent jurisdiction, compound such offence and order such person to pay sum of money not exceeding one half of the amount of the fine to which such person would otherwise have been liable to pay if he had been convicted of such offence.

(2) Where an offence is compounded in accordance with subsection (1) and proceedings are brought against the offender for the same offence, it shall be a good defence for the offender to prove to the satisfaction of the court that the offence with which the offender is charged has been compounded under sub section (1).

(3) Where the person fails to comply with the notification issued under this section within the prescribed period, the Director General-

- (a) shall, in addition to sum ordered, require the person to pay an interest at the rate prescribed in the Regulations; and
- (b) may enforce the notification in the same manner as a decree of a court for the payment of the amount stated in the notification.

Restriction on
execution
against
property of
Authority

44. Notwithstanding any provision to the contrary in any written law, where a judgement or order has been obtained against the Authority, no execution or attachment or process in the nature thereof shall be issued against the Authority, or against the property or assets of the Authority but the Authority shall cause to be paid out of the revenue of the Authority such amounts as may, by the judgement or order, be awarded against the Authority to the person entitled thereto.

Regulations

45.-(1) The Minister may, in consultation with the Minister responsible for regulated sector, make regulations for the better carrying out of provisions of

this Act.

(2) Without prejudice to subsection (1), the Minister may make regulations prescribing-

- (a) standards of regulated goods and services;
- (b) terms and conditions of supply of regulated goods and services;
- (c) levies and fees payable to the Authority;
- (d) safety for goods and services in the regulated sectors;
- (e) review and appeal procedure;
- (f) procedure for conducting inquiry;
- (g) handling and transportation of dangerous goods;
- (h) the circumstances in which, and the terms and conditions on which, a supplier or intending supplier of regulated goods or services shall be able to gain access to facilities owned or controlled by another person; and
- (i) for any matter which, in the opinion of the Authority, is necessary for the efficient performance of its functions.

Inconsistency
with sector
legislation

46. Where, there is any inconsistency between the provisions of this Act and the provisions of sector legislation, this Act shall prevail.

PART XI

REPEAL AND TRANSITIONAL PROVISIONS

Repeal and
savings

47.-(1) The Surface and Marine Transport Regulatory Authority Act, is hereby repealed.

(2) Notwithstanding the repeal of Surface and Marine Transport Regulatory Authority Act, any contract, document, licence, order, permit or resolution made, granted or approved prior to the commencement of this Act in relation to the production, distribution or supply of regulated goods or services in the said sectors shall remain in operation until they are revoked, annulled or otherwise replaced.

(3) Any subsidiary legislation and all exemptions

made or given under the provisions of the repealed Act or any other written laws, which were in force immediately before the commencement of this Act shall, so far as it is not inconsistent with the provisions of this Act, until revoked, replaced or rescinded remain in force as if they were made under this Act.

(4) This Act shall not operate so as to affect in a prejudicial way the rights of any person under a licence or permit granted prior to the commencement of this Act or any contract entered into prior to the commencement of this Act.

(5) Unless the context requires otherwise, any reference in any written law to the Surface and Marine Transport Regulatory Authority Act shall be construed as reference to this Act.

Continuation
of business
after
operation of
Act

48. Any person who immediately before the commencement of this Act, was a holder of a licence authorizing him to carry on the services regulated under this Act, shall continue carrying on such services.

Rights of
employee

49.-(1) The service of any employee or staff of the former Surface and Marine Transport Regulatory Authority shall be deemed to be continuous with the Authority.

(2) The terms and conditions of employment of any employee or staff from the Surface and Marine Transport Regulatory Authority who joins the Authority shall not be less favourable than those enjoyed by that employee immediately prior to the date on which he joined the services of the Authority.

(3) An employee or staff of the Surface and Marine Transport Regulatory Authority whose service does not continue with the authority and where such employee or staff is a member of any statutory, voluntary pension or other superannuate benefit or scheme prior to such termination, such employee or staff shall be paid terminal benefits in accordance with the laws and regulations governing such scheme immediately before

such termination.

Assets and liabilities

50.-(1) All assets, interests, rights, privileges, liabilities or obligations vested in the Surface and Marine Transport Regulatory Authority not related to maritime transport shall be transferred to and be vested to LATRA without further assurance.

(2) Where any question arises as to whether any particular property, or any particular asset, interest, right, privilege, liability or obligation has been transferred to or vested in accordance with provisions of subsection (1), a certificate under the hand of the Minister shall be conclusive evidence that the property, asset, interest, right, privilege, liability or obligation was or was not so transferred or vested.

Transition period

51.-(1) There shall be a transition period of six months commencing from the date of commencement of this Act.

(2) Subject to this Act and not later than the expiration of the transition period, all legal and other necessary measures shall be taken to facilitate the winding up of the affairs and business of the Surface and Marine Transport Regulatory Authority and the effectual transfer and vesting in the Authority of its assets and liabilities.

(3) Notwithstanding subsection (1), the Minister may extend the transition period for a further period as may be required.

Continuation and completion of proceedings

52.-(1) Where on the commencement of this Act, any disciplinary proceeding was pending against any employee of the Surface and Marine Transport Regulatory Authority related to surface transport sector, such proceeding shall be carried on and completed by the LATRA and, where on the commencement date any matter was in the course of being heard or investigated or had been heard or investigated by Surface and Marine Transport Regulatory Authority related to surface

transport sector but no order or decision had been rendered, LATRA shall complete the hearing or investigation and such order, ruling or directives as it could have been made by LATRA under which the proceedings or matter were or was vested before the commencement date.

(2) For the purpose of this Part, “commencement date” means the date on which this Act comes into operation.

PART XII

CONSEQUENTIAL AMENDMENTS

Sub-Part I

Amendment of the Railways Act (Act No.10 of 2017)

Construction
Act No.
10 of 2017

53. This Sub-Part shall be read as one with the Railways Act hereinafter referred to as the “principal Act”.

Amendment
of section 59

54. The principal Act is amended in section 59 by deleting the phrase “provided for under section 6 of the Surface and Marine Regulatory Authority” and substituting for it the phrases “provided for under the Land Transport Regulatory Authority Act in its acronym “LATRA”.

Sub-Part II

Amendment of the Transport Licensing Act (Cap.317)

Construction
Cap. 317

55. This Sub-Part shall be read as one with the Transport Licensing Act hereinafter referred to as the “principal Act”.

Addition of
section 5A

56. The principal Act is amended by adding immediately after section 5 the following-

Transfer of
powers and

5A.-(1) Notwithstanding

functions anything contained in this Act, all the regulatory powers and functions vested in the Minister and in the licensing authority are hereby transferred to the regulatory Authority.

(2) For the purposes of this section, “regulatory authority” means the Land Transport Regulatory Authority established under section 3 of the Land Transport Regulatory Authority Act.”

Amendment
of section 11

- 57.** The principal Act is amended in section 11-
- (a) in subsection (1), by deleting paragraph (b) and substituting for it the following:
 - “(b) use for hire or reward a public service vehicle for the conveyance of any person.
 - (b) in subsection (5) by-
 - (i) deleting paragraphs (f) and (h) and;
 - (ii) renaming paragraphs (g) and (i) as paragraphs (f) and (g) respectively.

SCHEDULE

(Made under section 7(5))

PROCEEDINGS OF THE BOARD

Election of
Deputy
Chairman

1. The Board shall elect one of its members to be Deputy Chairman for a term of one year and shall be eligible for re-election.

Tenure of
appointment

2.-(1) The tenure of first members of the Board shall be as follows:

- (a) Chairman - four years;
- (b) two members - three years;
- (c) two members - four years; and
- (d) one member - five years;

(2) Members of the Board shall be eligible for reappointment for one more term but shall not be eligible for reappointment.

(3) Any member, may at any time resign by giving notice in writing to the appointing authority and from the date specified in the notice or if no date so specified, from the date of the receipt of the notice by the appointing authority, he shall cease to be a member.

Co option of
members

3. The Board may co-opt any person whose presence is in its opinion desirable to attend and to participate in the deliberation of meeting of the Board and such person shall have no right to vote.

Meetings of
Board

4.-(1) The Board shall meet at least four times a year.

(2) An ordinary meeting of the Board shall be convened by the Chairman and the notice specifying the place, date and time of the meeting shall be sent to each member at his usual place of business or residence.

(3) Where the Chairman is unable to act by any reason, the Deputy Chairman shall convene the meeting.

(4) The Chairman or, in his absence, the Deputy Chairman, may, if requested in writing in that behalf by at least half the members, convene a special meeting of the Board.

(5) The Board may review its own decision made under this Act.

Cessation of
membership

5.- A member of the Board may cease to be a member where he-

- (a) is declared bankrupt;
- (b) is convicted of a criminal offence;
- (c) fails to declare conflict of interest;
- (d) fails to perform his duties because of ill health or physical or mental impairment;
- (e) has breached a code of conduct;
- (f) fails to attend at least two thirds of all meetings of the Authority for twelve months consecutively without reasonable excuse.

Appointment of temporary member

6. Where any member is by reason of illness, infirmity or absence from the United Republic unable to attend any meeting of the Board, the Minister may appoint a temporary member in his place and any such temporary member shall cease to hold office on the resumption of office of the substantive member.

Quorum

7. The quorum at any meeting of the Board shall be more than half of the members in the Board.

Decision of Board

8. Decision of the Board shall be decided by majority of the vote of the members present and in the event of the equality of the vote the Chairman shall have a casting vote.

Minutes of meetings

9. Minutes in proper form of each meeting of the Board shall be kept and shall be confirmed by the Board at its next meeting.

Official seal

10.-(1) The official seal of the Authority shall be of such shape, size and form as the Board may determine.

(2) The official seal of the Authority shall be duly affixed if witnessed under hand by the Chairman, the Director General or the Secretary of the Authority and any other person dully authorized in that behalf.

Proceedings not invalidated by irregularity

11. Proceedings of the Board shall not be invalid by reason of any defect or irregularity in the appointment of any member or by reason that any person who purported bona fide to act as a member at the time of the proceeding was in fact disqualified or not entitled to act as a member.

Absence from three consecutive meeting

12. Where any member absents himself from three consecutive meetings of the Board without sufficient cause, the Board shall advise the appointing authority of the fact and the appointing authority may terminate the appointment of the member and appoint another member in his place.

Board may regulate its own proceedings

13. Subject to this Act, the Board shall have power to regulate its procedure in relation to its meetings and the transaction of its meetings.

Passed by the National Assembly on the 30th January, 2019.

STEPHEN KAGAIGAI
Clerk of the National Assembly