

RAILWAY REGULATORY AUTHORITY ORDINANCE, 2002

ORDINANCE XCII OF 2002

An Ordinance to provide for the establishment of the

Railway Regulatory Authority

[Gazette of Pakistan, Extraordinary,

Part I, dated 26-10-2002]

F.No.2(1)/2002-Pub. dated 26-10-2002.---The following Ordinance promulgated by the President is hereby published for general information:--

Whereas it is expedient to foster competition, encourage and facilitate private sector investment and participation in the development and operation of passenger and goods trains on the railway network, protect the public interest while respecting individual rights and provide effective and efficient regulations and for matters connected therewith or incidental thereto;

And whereas the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, therefore, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999, read with the Provisional Constitution (Amendment) Order No.9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:-

CHAPTER I

GENERAL

1. Short title, extent and commencement.----- (1) This Ordinance may be called the Railway Regulatory Authority Ordinance, 2002.

(2) It extends to whole of Pakistan.

(3) It shall, other than the provisions referred to in the First Schedule, come into force at once. The provisions of the First Schedule shall come into force together or separately on such date or dates as the Federal Government may, on the advice of Authority, by order in the official Gazette appoint.

2. Definitions.---In this Ordinance, unless there is anything repugnant in the subject or context,-

(a) "accident" means an abnormal happening whether involving a train or not which results in the disruption or likely disruption of the running of a rolling stock, whether attended or not with loss of human lives or serious injury to property or persons;

(b) "Act" means the Railways Act, 1890 (Act IX of 1890);

(c) "Authority" means the- Railway Regulatory Authority established under section 3;

(d) "Chairman" means the Chairman of the Authority and includes the Vice-Chairman when acting in substitution thereof;

(e) "decision" means an order, determination, direction or decision of the Authority made pursuant to this Ordinance, rules or regulations, and "decide" shall mean the action taken by the Authority to arrive at such decision;

(f) "emergency" means any situation, which requires the adoption of extraordinary measures by the Federal Government to ensure the continuity of the railway services;

(g) "goods" include in animate thing of every kind .and shall be construed as synonymous with the terms cargo, consignment, articles and substances;

(h) "integrated licence" means a licence which includes obligations on the licensee to maintain, improve or upgrade railway infrastructure in terms of the relevant licence;

(i) "license" means, in relation to a licensed section, the grant by the Authority of exclusive or non-exclusive operating rights for the carriage of passengers and goods by railway and includes integrated licences;

(j) "licensed section" means the section of railway identified in the licence within the boundaries of which railway services may be offered by a licensee on an exclusive or non-exclusive basis;

(k) "licensee" means a person in whose favour a licence is granted or deemed to have been granted, by the Authority;

(l) "licence fee" means a fee to be paid by the licensee to the Authority with the rules;

(m) "Member" means a Member of the Authority, including the Chairman;

(n) "policy guidelines" means policies of the Federal Government covering or related to any or all of the regulated activities which are issued in writing pursuant to a decision of the Cabinet of the Federal Government or any committee thereof;

- (o) "prescribed" means prescribed by rules made under this Ordinance;
- (p) "person" includes any individual or any legal entity including any partnership, firm, company, joint venture, trust or corporation;
- (q) "railway" has the same meaning as assigned to it under the Act and includes railway infrastructure;
- (r) "railway administration" in the case of railway administered and operated by the Federal Government, means the manager of the railway and includes the Federal Government;
- (s) "railway employee" means any person engaged by a licensee for the purpose of working the railway;
- (t) "railway infrastructure" means: (i) all the land within the fences or other boundary marks indicating the limits of the land appurtenant to a railway; (ii) all lines of rails, sidings or worked over for the purposes of, or in connection with, a railway; (iii) all stations, offices, warehouses, wharves, workshops, factories, fixed plant and machinery and other works constructed for the purposes of, or in connection with, a railway; (iv) water supply, sewerage, drainage, electrical, sui gas, signal and telecommunication services and installations used for the purpose of the railway whether these belong to or are hired or worked by a licensee; (v) residential colonies, dwelling houses, barracks, running rooms, rest houses or any other structure used for the resident.; (vi) the railway network; and (vii) all movable and immovable property in relation to the foregoing;
- (u) "railway infrastructure fund" means 'a fund established by the railway administration consisting of track access charges, applied to the maintenance and upgradation of the railway infrastructure in accordance with priorities determined by the Authority;
- (v) "railway services" means services offered by, a licensee in terms of the licence or otherwise;
- (w) "railway network" means the entire lines of rails, branches and sidings in Pakistan;
- (x) "rate" means as defined in the Act;
- (y) "regulated activity" means any activity that is within the powers and functions of the Authority;
- (z) "regulations" means the regulations made under this Ordinance;

(za) "rolling stock" includes locomotives, tenders, railcars, diesel or electric multiple units, coaches, passenger carriages, wagons, goods, cars, trucks, cranes, track machinery, track recording and inspection cars, and trolleys;

(zb) "rules" means the rules made under this Ordinance;

(zc) "terminal" means as defined in the Act; ,

(zd) "track access agreement" means an agreement between the railway administration in its capacity as the railway infrastructure owner and a licensee for access to railway infrastructure, such agreement being based on the model track access agreement prepared and published by the Authority following discussions with the railway administration;

(ze) "track access charge" means the amount, set out in the track access agreement, to be paid by a licensee to the railway administration for access to railway infrastructure;

CHAPTER - II ESTABLISHMENT OF

THE RAILWAY REGULATORY

AUTHORITY

3. Establishment of Railway Regulatory Authority.---(1) As soon as may be, but not later than two months after the commencement of this Ordinance, the Federal Government shall, by notification in the official Gazette, establish a regulatory authority, which shall be known as the "Railway Regulatory Authority".

(2) Subject to the provisions of this Ordinance, the Authority shall be independent in the performance of its functions. The Authority shall be a body corporate, having perpetual succession and a common seal with powers to acquire and hold property, both moveable and immovable, and to sue and be sued by its name.

(3) The Authority shall consist of a Chairman and three Members, out of whom one shall be designated as Member Technical, one as Member Licensing and one as Member Finance.

(4) The Chairman shall be an eminent person of known integrity and competence with a minimum of twenty-five years of experience in business, engineering, management or railways. The Chairman should also be well versed in licensing procedures and regulatory matters. ,

(5) The Member Technical shall be a person who holds an appropriate degree in the relevant field and is an experienced and eminent professional of known integrity and competence with a minimum twenty years of related professional experience in the

maintenance of railway infrastructure, its safety and strategic planning and dealing with accidents.

(6) The Member Licensing shall be a person who holds an appropriate degree in the relevant field and is an experienced and eminent professional of known integrity and competence with a minimum of twenty years of relevant professional experience in the field of railway engineering, railway operations, transport engineering or transport economics.

(7) The Member Finance shall be a person who holds an appropriate degree in the relevant field, experienced, eminent professional of known integrity and competence with a minimum of twenty years of related experience in the field of corporate financing or accounting.

(8) Subject to subsection (9),--

(a) the Chairman shall be appointed, by the Federal Government for an initial term of five years and shall be eligible for reappointment for a similar term;

(b) the Member Licensing shall be appointed by the Federal Government for an initial term of four years and shall be eligible for reappointment for a term of five years;

(c) the Member Technical shall be appointed by the Federal Government for an initial term of three years and shall be eligible for reappointment for a term of five years; and

(d) the Member Finance shall be appointed by the Federal Government for an initial term of two years and shall be eligible for reappointment for a similar term.

(9) The Chairman and other Members shall retire on attaining the age of sixty-five years.

(10) In case of a vacancy occurring due to the death, resignation, retirement or removal of any Member, the Federal Government shall appoint another qualified person within a period not exceeding three months from the date the vacancy occurred.

(11) Any Member may resign from his office by writing under his hand addressed to the Federal Government. The Federal Government may remove a Member from his office if, on an inquiry by the Federal Public Service Commission, he is found unable to perform the functions of his office due to mental or physical disability or to have committed misconduct.

(12) Any Member may serve a maximum of two terms.

(13) The Federal Government shall designate one of the Members as Vice-Chairman, who shall act as Chairman at any time during which the Chairman for any reason is incapable of exercising the Chairman's powers or performing the Chairman's duties and when so acting, the Vice-Chairman shall exercise the powers and perform the duties imposed on the Chairman by this Ordinance.

4. Meetings of the Authority.---(1) The Chairman and two other Members shall constitute a quorum for a meeting of the Authority requiring a decision by the Authority.

(2) The decisions of the Authority shall be taken by the majority of its Members and in case of a tie, the Member presiding shall have an additional vote.

(3) All decisions of the Authority shall be in writing and shall identify the decision of the Chairman and other members separately.

(4) No act, proceeding or decision of the Authority shall be invalid by reason only of the existence of a vacancy or defect in, the constitution of the Authority.

(5) The Chairman shall call all meetings of the Authority. The Chairman shall also call meetings of the Authority immediately on being requested in writing to do so by another Member of the Authority.

(6) Each Member shall have reasonable notice of the time, place and matter on which a decision shall be taken.

5. Remuneration and conflict of interest.---(1) The Members shall be paid such remuneration and allowances and shall be entitled to such privileges and facilities for their respective terms of office as may be determined by the Federal Government in advance of their appointment which shall not be varied to their disadvantage during their term in office.

(2) No person shall be appointed by the Federal Government as a Member if such person has any direct or indirect financial interest in, or has any connection which might reasonably be viewed as giving rise to a conflict of interest with, any person involved in any regulated activity. No person appointed as a Member shall during his term in office have or maintain any direct or indirect financial interest in any person involved in any regulated activity. Members shall not at any time during their term of office engage themselves in any other services, business, vocation or employment with, any other person.

(3) No Member shall take part in any decision, if such Member is in any way, whether directly or indirectly, concerned or interested in the decision, nor shall such Member's presence count for the purpose of forming a quorum at the time of any such decision.

(4) Every Member who knowingly contravenes any of the provisions of subsections (2) and (3) shall, on inquiry by the Federal Public Service Commission, be guilty of misconduct.

(5) Subject to subsection (6), it shall not be lawful for any Member, for so long as he holds office and for a period of two years thereafter, to seek or hold any office or employment nor to acquire or purchase (whether in his name or otherwise) any interest in any corporation, partnership, trust, firm or company carrying on,--

(a) business in any regulated activity; or

(b) the business of providing professional or advisory services to any person undertaking any regulated activity.

(6) A Member may, before the expiration of two years after he has ceased to hold that office, enter into the employment of or accept any professional or advisory relationship with any corporation, partnership, trust, or company, carrying on business in any phase of a regulated activity, provided he has obtained written approval of the Federal Government which shall not be unduly denied.

(7) A Member shall not be in contravention of subsections (2) and (3), if he is receiving any pension benefits, while serving the Authority, due to him from a prior employment with any person.

6. Recruitment of employees.---(1) The Authority may, from time to time, employ officers, members of its staff, experts, consultants, advisors, and other employees on such terms and conditions, as it may deem fit.

(2) The Authority shall make regulations for appointment, promotion, termination and other terms and conditions of employment of persons employed under subsection (1).

7. Chairman, Members, employees, experts, consultants and advisers not to be civil servants.---The Chairman, Members, employees of the Authority or experts, consultants or advisers employed by the Authority shall be governed by the terms and conditions of their appointment and shall not be deemed to be civil servants within the meaning of the Civil Servants Act, 1973 (Act LXXI of 1973).

8. Chairman, etc., to be public servants.---The Chairman, members, employees, experts, consultants and advisers of the Authority shall, when acting or purporting to act in pursuance of any of the provisions of this Ordinance or the rules or regulations

be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

9. General powers and functions of the Authority.----- (1) In addition to such other powers and functions as may be imposed on it or transferred under or by virtue of this Ordinance, the Authority shall be exclusively responsible for granting licences and for the carrying out of regulated activities and regulating such activities.

(2) Without prejudice to the generality of the foregoing, the Authority shall,-

- (a) promote and protect the interests of railway users through fair competition;
- (b) promote the provision of efficient and competitive railway services;
- (c) approve the terms of track access agreements;
- (d) ensure that the terms and conditions of licences are being strictly complied with by the licensees;
- (e) approve the railway infrastructure usage plan (time-tabling) to be submitted by the railway administration keeping due margins for maintenance and rehabilitation works;
- (f) carry out periodic inspections of the railway infrastructure for ensuring safety of train operations;
- (g) in the case of a licence that is not an integrated licence, in consultation with the railway administration, carry out strategic planning for improvement, upgradation and modernization of the railway infrastructure for implementation by railway administration and monitoring the progress thereof
- (h) in the case of an integrated licence, in consultation with the railway administration, carry out strategic planning for improvement, upgradation and modernization of the railway infrastructure for implementation by the licensee and monitoring the progress thereof;
- (i) determine the limitation of employment, of railway employees to ensure the safe running of trains;
- (j) subject to section 13, determine rates;
- (k) approve terminals;
- (l) recommend to the Federal Government, any or all measures necessary for enhancing the role of the railway in the national transportation;

- (m) prescribe technical standards for the railway infrastructure and the rolling stock and for the besting thereof;
- (n) review the parameters of the rolling stock and approve the same or direct such modifications as may be necessary from a safety point of view;
- (o) resolve disputes between parties to track access agreements and disputes between licensees;
- (p) subject to section 40, make rules;
- (q) subject to section 41, make regulations;
- (r) prescribe a uniform form of accounts and accounting practices to be complied with by licensees;
- (s) sanction the opening or re-opening of a section of the railway network after ascertaining the fulfilment of prescribed pre-conditions;
- (t) direct the closing of a section of the railway network or the discontinuation of a particular rolling stock or restoration of the same;
- (u) sanction the use of any rolling stock on the railway network after ascertaining their suitability and conformance to the prescribed standards;
- (v) make such periodic or other inspections of the railway network or of any rolling-stock used thereon as it may deem necessary;
- (w) require licensees to furnish, on a periodical basis, not less than one year, operating and financial results and such other information as may be necessary;
- (x) prescribe fines for contravention of the provisions of this Ordinance, rules, regulations, decisions and terms and conditions of a licence;
- (y) make inquiry into the cause of any accident on a railway;
- (z) by an order in writing require the attendance before the Authority of any person and to require answers or returns to such inquiries as the Authority thinks fit;
- (za) where the Authority deems it appropriate, obtain loans, grants and make investments;
- (zb) where the Authority deems it appropriate, form and hold interests in companies for the purpose of facilitating the performance of any power and functions as may be imposed on it or transferred under or by, virtue of this Ordinance; and

(zc) perform any other function or exercise power as may be incidental or consequential to the performance of any of its functions or the exercise of any of its powers.

(3) The Authority shall impose and collect such fees and other charges in respect of its functions as may be determined, from time to time, by the Authority in accordance with the rules.

10. Delegation of powers.-- The Authority may, by general or special order, delegate to any officer of the .Authority the power to exercise on behalf of the Authority any of its powers, duties or functions under this Ordinance subject to such conditions as it may think fit to impose:

Provided that the powers of the Authority to grant licences and to issue orders pursuant to section 22, shall only be exercised in a meeting of the Authority.

CHAPTER III

LICENSING

11. Exclusive power to grant licences.---The Authority shall have the exclusive-power, to be exercised in "the manner prescribed in the rules, to,

(a) determine the licensed section; and

(b) grant, issue, renew, extend, modify, amend, transfer, suspend review, cancel and reissue, revoke or terminate, a licence.

(2) The Authority shall from time to time designate as eligible for provision under a licence such services for the carriage of passengers and goods by railway as it may consider appropriate.

12. Bidding for licence.----The person in whose favour a licence is to be granted shall be selected by the Authority following a transparent and competitive bidding process carried out by the Authority in accordance with the rules.

13. Rates and approved discount schemes.---(1) A licence may include provision with respect to rates to be charged for railway services.

(2) The Authority shall ensure that in the case of a licensee enjoying a monopolistic position, the licence contains such provisions necessary for the purpose of securing that any rates which are to be charged are, in the opinion of the Authority, reasonable in all the circumstances of the case.

14. General terms and conditions of licences.---(1) A licence may include such conditions as appear to the Authority to be requisite or expedient having regard to the powers and functions imposed on or transferred to the Authority under or by virtue of this Ordinance.

(2) Without prejudice to the generality of subsection (1), a licence may provide for.--

(a) the rendering to the Authority by the licensee of payments of such amounts and at such intervals as may be specified in, or determined by or under, the licence; or

(b) the payment, from the railway infrastructure fund, to the licensee of such amounts and at such intervals as may be specified in, or determined by or under, the licence.

(3) All licensees shall pay to the Authority a licence fee.

15. Failure to secure subsequent licence.---In any case where, -

(a) a licence is terminated or comes to an end; and

(b) no further licence has been entered into in respect of the railway services formerly provided under that licence,

the Authority shall have the power to secure the operation of those railway services until such time as it again begins to be operated under or by virtue of a licence.

16. Railway administration as deemed licensee.---The railway administration shall be deemed to have been granted by the Authority, on a non-exclusive basis, licences on terms and conditions to be notified from time to time, by the Authority, in relation to all licensed sections unless a licence provides otherwise.

17. Transfer and assignments of licences.---(1) No licence shall be transferred or assigned without the consent in writing of the Authority. The Authority may consent or refuse the transfer or assignment of a licence.

(2) Any consent under subsection (1) may be subject to such conditions, restrictions and stipulations as the Authority thinks fit to impose, which may include conditions modifying, or requiring or otherwise providing for the making of modifications to, the conditions of the licence.

(3) An application for the transfer or assignment of a licence shall be submitted to the Authority on the prescribed form and in accordance with the regulations.

(4) An application under subsection (3) shall be accompanied by the prescribed fee, if any.

(5) A transfer or assignment of a licence shall have no effect until the Authority has consented to such transfer or assignment.

CHAPTER IV

TRACK ACCESS

18. Directions by the Authority.---(1) The Authority may, on application of a licensee, give directions to the railway administration requiring it to enter into a track access agreement, but no such directions shall be given if and to the extent that,-

(a) performance of the track access agreement, if entered into, would involve the railway administration in being in breach of a track access agreement; or

(b) as a result of an obligation or duty owed by the railway administration which arose before the coming into force of this Ordinance, the consent of some other person is required by the railway administration before entering into the track access agreement

19. Approval of track access agreements.---The railway administration shall not enter into a track access agreement unless it does so pursuant to directions issued under section 18 and such track access agreement has been approved by the Authority.

20. Amendments to track access agreements.----- (1) Any amendment, or purported amendment, of a track access agreement shall be void unless the amendment has been approved by the Authority.

(2) Subject to subsection (1), the Authority shall have the power to direct or otherwise require amendments to be made to a track access agreement.

CHAPTER V

ENFORCEMENT

21. Facilities to be afforded to the Authority. ---The licensees shall afford to the Authority all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon it under or by virtue of this Ordinance.

22. Securing compliance with decisions etc.---(1) Where the licensee is contravening or likely to contravene any decision, the Authority shall make such order as is requisite for the purpose of securing compliance with that decision, including but not limited to an order terminating the licensee's licence or appointing one or more competent persons to manage the affairs of the licensee for purposes of ensuring compliance with the Authority's order.

(2) Before making any order under subsection (1), the Authority shall give notice to the person against whom the order may be directed,-

(a) stating that it proposes to make the order and setting out its effects;

(b) setting out the acts or omissions which constitute or would constitute contraventions of the decision;

(c) setting out any other facts which justify the making of the order; and.

(d) specifying the period within 'which representations or objections with respect to the proposed order may be made,

and shall consider any such representations or objections which are duly made and not withdrawn.

(3) Any person appointed by the Authority pursuant to subsection (I) shall not be liable for any loss or damages caused by any act or omission where such act or omission occurs in the performance of his duties.

CHAPTER VI

EMERGENCY

23. Emergency.---In the event of any emergency, the Federal Government may, by an order in writing issued by a Federal Secretary, require the Authority and Authority shall thereby be empowered to issue directions to any licensee to provide specified number of train services or suspend the same, provided that appropriate compensation shall be paid to the respective licensee by the Federal Government through the Authority.

CHAPTER VII

REGISTERS AND REPORTS

24. Keeping of registers.---The Authority shall, at such premises and in such form as it may determine, maintain a register or registers setting out therein,-

(a) every licence;

(b) every track.access agreement, and

(c) every amendment or modification made to a licence or track access agreement. -

25. Submission of yearly report, returns, etc.---The Authority shall submit to the Federal Government, and publish, as soon as possible after the end of every financial year but before the last day of December the next following year,-

(a) a report on the conduct of its affairs for that financial year, including anticipated developments for the following financial year; and

(b) a report on thof the railway industry in Pakistan, insofar as it relates to regulated activities, identifying the ownership, operation, management, control, efficiency and cost of regulated activities and other matters related to regulated activities.

CHAPTER VIII

BUDGET AND ACCOUNTS

26. Budget and accounts.---(1) The Authority, in respect of each financial year, shall prepare its own budget in accordance with prescribed procedures and shall maintain complete and accurate books of accounts of its actual expenses and receipts, and of the Railway Regulatory Authority Fund.

(2) The accounts of the Authority shall be audited annually by the Auditor-General of Pakistan and one or more auditors who are chartered accountants within the meaning of the Chartered Accountants. Ordinance, 1961 (Ordinance X of 1961); appointed by the Authority in consultation with the Auditor-General of Pakistan.

27. Railway Regulatory Authority Fund.---(1) There shall be a fund to be known as the "Railway Regulatory Authority Fund" which shall vest in the Authority and shall be utilized by the Authority, to meet its expenses and charges properly incurred in connection with the carrying out of its functions and duties imposed or transferred to it under or by virtue of this Ordinance, including without limitation the payment of salaries and other remuneration to the Chairman, Members, employees, experts, consultants and advisors of the Authority.

(2) The Railway Regulatory Authority Fund shall consist of:

(a) seed money of rupees fifty millions by the Federal Government;

(b) charges and fees including licence fees assessed and collected by the Authority to recover the reasonable costs of regulated activities under this Ordinance;

(c) fines and other penalties imposed and collected by the Authority as specified under this Ordinance;

(d) proceeds received by the Authority from the sale of data, publications, reports, maps, and other information;

(e) loans obtained by the Authority, with the prior written approval of the Federal Government; and

(f) proceeds of any investments made by the Authority in utilising any amounts of the Railway Regulatory Authority Fund which are not required for immediate use.

CHAPTER IX

POLICY GUIDELINES

28. Powers of the Federal Government to issue policy guidelines.---(1) The Federal Government may, as and when it considers necessary, issue policy guidelines to the Authority on matters of policy not inconsistent with the provisions of this Ordinance or the rules. The Authority shall comply with the policy guidelines in the exercise of its powers and functions and in making decisions.

(2) Without prejudice to the generality of the foregoing, the Federal Government may issue policy guidelines in relation to,-

(a) defence traffic. to be carried over the railway network;

(b) restriction on the grant of licenses on considerations of national security; and

(c) continuation of a minimum number of passenger and goods services on certain sections of the railway on socio-economic considerations provided that the Federal Government will pay appropriate compensation through the Authority for running such unremunerative trains to the licensee.

CHAPTER X

OFFENCES

29. Offences.---(1) Any person who,---

(a) undertakes any regulated activity in contravention of this Ordinance, rule, regulation or terms of a licence;

(b) prevents or obstructs the smooth and efficient running of trains;

(c) prevents, obstructs or interferes with the working of the Authority or any of its employees;

(d) commits mischief;

(e) damages, removes, interferes or tampers with any rolling stock, railway infrastructure, equipment or installation; .

(f) other than railways employee or a another person authorised in this behalf by a licensee, opens any gate or chain or barrier set up on either side of a level crossing, which is closed for the time being to road traffic;

(g) breaks any gate or chain or barrier set up on either side of a level crossing;

(h) is driving a vehicle fails to stop when required to do so or take due care when crossing a level crossing;

(i) crosses a railway network at place other than a manned or unmanned level crossing;

(j) sells articles of whatsoever description on any train without the prior written consent of the relevant licensee;

(k) assaults or intentionally obstructs a licensee from carrying out its obligations under a licence;

(l) endangers the safety of any person,-

(i) by contravening any provision of this Ordinance or any rule or regulation notified hereunder; or

(ii) by contravening or not complying with any decision;

(m) provides any information, recorded or documents to the Authority pursuant to a decision of the Authority or otherwise, which information, record or document is false to the knowledge of the person providing the same;

(n) intentionally obstructs an officer of the Authority in exercise of his functions or powers under this Ordinance in relation to the inspection of any equipment or any premises or' enquiry into the causes of an accident;

(o) aids, abets, counsels, conspires, incites or attempts the commission or omission of any offences referred to in clauses (a) to (n) above,

shall be guilty of an offence under this Ordinance and shall be punishable with imprisonment which may extend to five years or a fine of rupees twenty thousands or with both.

(2) If a licensee fails to comply with any provision of this Ordinance, it shall pay the Authority a sum of rupees, twenty thousand and in case of continued default, rupees one thousand for every day the default continues.

(3) If a licensee refuses or neglects to comply with any decision of the Authority, it shall pay the Authority a sum of rupees twenty thousand and in case of continued default, rupees one thousand for every day the default continues.

(4) No Court shall take cognizance of any offence punishable under subsection (1) except on a complaint filed in writing by an officer authorised by the Authority.

(5) Where the accused is a company incorporated or registered under the Companies Ordinance, 1984 (Ordinance XLVII of 1984), every director, chief executive and officer of such company who knowingly allows the commission of any offence under this Ordinance, shall be liable to the punishment specified in subsection (1).

(6) Nothing contained herein shall authorise punishment of any person for,-

(a) an act or omission that was not punishable by law at the time of the act or omission or.

(b) an offence by a penalty greater than or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.

CHAPTER XI

MISCELLANEOUS

30. Power to call for information.---(1) The Authority may call for any pertinent information required by it for carrying out the purposes of this Ordinance from any person involved, directly or indirectly in the provision of any regulated activity or any matter incidental or consequential thereto. Any person called upon to provide such information shall do so within the period prescribed by the Authority and his failure to do so shall be punishable by the imposition of such penalty as may be prescribed.

31. Inspection by public.---(1) Subject to section 37, the Authority shall maintain public files that shall be kept open in convenient form for public inspection and examination during reasonable business hours, on payment of such reasonable fees as the Authority may prescribe.

(2) Subject to procedures and standards for confidentiality prescribed by the Authority, the Authority's files shall include all relevant documents to be maintained and indexed as the Authority deems fit.

32. Authority hearing.---(1) Unless otherwise expressly provided in this Ordinance or any rule or regulation, any decision that the Authority has the power to make may be made on its own motion or initiative after the holding of a meeting of the Authority, and without giving of notice to the public and without holding a hearing:

Provided that, if it appears to the Authority that its decision relating to a regulated activity may directly and adversely affect the rights of a person, the Authority shall, prior to reaching the decision, give the person an opportunity of being heard, including presentation of evidence relevant to the decision.

33. Complaints.---(1) Any interested person may file a written complaint with the Authority against a licensee, for contravention of any provision of this Ordinance, rule, regulation, licence or track access agreement.

(2) The Authority shall, on receipt of a complaint, provide an opportunity to the complainant as well as to the person against whom such complaint has been made to state its case before making a decision thereon.

34. Appeals against order of a delegate.---Any person aggrieved by any order or decision of the delegatee of a power delegated by the Authority under section 10 may appeal, within thirty days of the receipt of such decision or order, to the Authority and the Authority shall hear and decide on the appeal within ninety days from the date of its presentation.

35. Review of Authority decision.---The Authority may review, rescind, change, alter or vary any decision, or may rehear an application before deciding it in the event of a change in circumstances or the discovery of evidence which in the opinion of the Authority, could not have reasonably been discovered at the time of the decision, or, (in the case of a rehearing) at the time of the original hearing if consideration of the change in circumstances or of the new evidence would materially alter the decision.

36. Recovery of arrears.---All fees, fines or other amounts due or payable to the Authority may be recovered as arrears of land revenue.

37. Confidential information.---(1) Except as provided under the regulations, no person shall communicate or allow to be communicated any record, return or information obtained under this Ordinance to a person not legally entitled to that information or allow any person not legally entitled to that record, return or information to have access to any record, return or information obtained under this Ordinance.

(2) A person who knowingly receives the record, return or information obtained under this Ordinance shall hold the record, return, or information subject to the same

restrictions under subsection (1) as apply to the person from whom the record, return or information was received.

38. Immunity. ---Except as expressly provided in this Ordinance, no suit, prosecution or other legal proceedings shall lie against the Authority, the Chairman or any member, employee, expert, consultant or advisor of the Authority in respect of anything done or intended to be done in good faith under this Ordinance, the rules or regulations.

39. Winding-up of the Authority.---No provision of any law relating to winding-up of body corporates shall apply to the Authority. The Authority shall only be wound up by Ordinance or Act of Parliament.

40. Power to make rules. --- (1) The Authority may, with- the approval of the Federal Government, which approval shall not be unduly delayed or unreasonably withheld, make rules for carrying out the purposes of this Ordinance. On approval of rules by the Federal Government, the Federal Government shall notify the same in the official Gazette.

(2) Without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(a) determination (where applicable) of rates, terminals and tariffs for regulated activities.

(b) the terms and conditions for the grant, extension, modification, amendment, issuance, renewal, suspension, review, cancellation and reissue, revocation termination or transfer of a licence and including provision of information or records:

(c) provision of fines and penalties for offences and contravention of this Ordinance, the rules, the regulations and terms and conditions of licences;

(d) promoting fair competition;

(e) inspection and audit of regulated activities;

(f) review of the decisions of the Authority;

(g) abandonment of a regulated activity;

(h) access and inspection by the Authority of the regulated activities and provision of penalties for preventing the Authority to carry out inspection;

- (i) levy of fees;
 - (j) enforcing the terms and conditions of licences and decisions of the Authority; and
 - (k) any other matter incidental or consequential to the implementation of the purposes of the Ordinance.
- (3) The power to make rules conferred by this section, except for the first occasion, shall be subject to the condition of previous publication.

41. Power to make regulations.---(1) The Authority may, by notification in the official Gazette, make regulations, consistent with the provisions of this Ordinance or the rules, for the carrying out of its functions under this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:-

- (a) maintenance and submission of records by any person involved directly or indirectly in a regulated activity and the inspection of the records by the Authority;
- (b) establishment of technical standards and their monitoring for the design, construction, testing, operation, maintenance and abandonment of a regulated activity;
- (c) administration of the Railway Regulatory Authority Fund;
- (d) procedure for carrying out bidding for licenses;
- (e) procedure for closing and opening a section of the railway network;
- (f) establishment of terms and conditions of employment and remuneration policies for staff, consultants and advisors of the Authority;
- (g) procedure for resolving disputes amongst the licenses and the signatories to the track access agreement;
- (h) rules of practice, processes and procedures for carrying out the functions of the Authority;
- (i) limitation of employment of railway employees;
- (j) procedure for appeal of decision of order made by delegates pursuant to section 10:

(k) prescription of forms and procedures for an application for a regulated activity and the time for submission;

(l) procedure for sanctioning the use of rolling stock on the railway network: and

(m) any other matter incidental or consequential to the implementation of the functions of the Authority.

42. Ordinance to override other laws.---(1) The provisions of this Ordinance, the rules and the regulations, and any licences issued hereunder shall have effect notwithstanding anything to the contrary contained in any other law, rule or regulation, for the time being in force, and any such law, rule or regulation shall, to the extent of any inconsistency, cease to have any effect on the commencement of this Ordinance and the Authority shall, subject to the provisions of this Ordinance, be exclusively empowered to determine the matters in its jurisdiction as set out in this Ordinance.

(2) Nothing in this Ordinance, or any repeal or amendment effected thereby, shall affect or be deemed to affect anything done, action taken, proceedings commenced, directions given, instruments executed or orders, rules or regulations issued under or in pursuance of any law repealed or amended by this Ordinance and any such things, actions, proceedings, directions, instruments or orders shall, if in force on the commencement of this Ordinance, continue to be in force and have effect as if the same were respectively done, taken, commenced, given, executed or issued under this Ordinance.

43. Certification of public purpose for compulsory acquisition of land.---The Authority may in the manner and on such terms and conditions, as may be prescribed in the rules, on an application by a licensee, certify that the requirement of a licensee to acquire a property is for a public purpose. For the purposes of the Land Acquisition Act, 1894 (Act I of 1894), the certificate of the Authority shall be conclusive proof that the proposed acquisition for such licensee is for a public purpose.

CHAPTER XII

AMENDMENTS, SAVINGS etc.

44. Amendment of laws and savings.---(1) The provisions of the laws mentioned in the Second Schedule shall stand amended to the extent specified therein.

(2) The Federal Government may from time to time, by notification in the official Gazette, deem such rules and regulations made and notified under the Act as rules and regulations made and notified under this Ordinance:

45. Removal of difficulties.---If any difficulty arises in giving effect to any provision of this Ordinance, the Federal Government may make such order not inconsistent with the provisions of the Ordinance, as may appear to it to be necessary for the purpose of removing the difficulty, provided that no such order shall be made after the expiry of two years from the promulgation of this Ordinance.

FIRST SCHEDULE

(See subsection (3) of section 1)

In Part I of the Second Schedule, in paragraph 1

(a) in subparagraph (2), clause (g) of section 3, sections 4, 5, 6, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 42-13, 43, 44, 47, 52, 71-A, 71-B, 71-C; 71-D, 71-E, 71-F, 71-G and 71-H;

(b) in subparagraph (6), clause (a) and sub-clause (ii) of clause (b);

(c) in subparagraph (7), sections 53, 54, 62, 72, 84, 85, 94, 134; and

(d) subparagraphs (9), (10), and (17) (sic)

SECOND SCHEDULE (See
section 44) **ENACTMENTS**

AMENDED PART I

1. In the Railways Act, 1890 (LX of 1890)----

(1) for section 3, the following shall be substituted, namely:-

"3. Definitions. ---In this Act, unless there is anything repugnant in the subject or context,-

(a) "accident" means as defined in the Ordinance;

(b) "Authority" means as defined in the Ordinance;

(c) "Collector" means the chief officer in charge of the land-revenue administration of a district, and includes any officer specially appointed by the Provincial Government to discharge the functions of a Collector under this Act;

(d) "ferry" includes a bridge of boats, pontoons or rafts, a swing bridge, a flying bridge and a temporary bridge, and the approaches to, and landing places of, a ferry;

(e) 'goods" means as defined in the Ordinance;

(f) "inland water" means any canal, river, lake or navigable water;

(g) "Inspector" means an Inspector of Railways appointed under this Act;

(h) "licence" means as defined in the Ordinance

(i) "licensee" means as defined in the Ordinance;

(j) "one kilogram" means a weight of one thousand grams, each gram being a weight of one thousand milligrams;

(k) "Ordinance" means the Railway Regulatory Authority Ordinance, 2002 (XCII of 2002);

(l) "pass" means an authority given by a licensee, or by a person appointed by such licensee in this behalf, and authorizing the person to whom it is given to travel gratuitously on a train operated by that licensee;

(m) "railway" means a railway, or any portion of a railway, for the public carriage of passengers, animals or goods, and includes -

(i) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway;

(ii) all lines of rails, sidings, or branches worked over for the purposes of, .or in connection with, a railway;

(iii) all stations, offices, warehouses, wharves, workshops manufactories, fixed plant and machinery and other works constructed for the purposes of, or in connection with, a railway:

(iv) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway; and

(v) railway infrastructure, as defined in the Ordinance

(n) "railway administration" means as defined in the Ordinance;

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

(p) "railway employee" means as defined in the Ordinance;

(q) "rate" includes any fare, charge or other payment for the carriage of any passenger animal or goods;

(r) "rolling-stock" means as defined in the Ordinance;

(s) "terminals" includes charges in respect of stations, sidings, wharves, depots, warehouses, cranes and other similar matters and of any services rendered thereat;

(t) "through traffic" means traffic which is carried over the railways of two or more railway administrations;

(u) "ticket" includes a single ticket, a return ticket and a season ticket;

(v) "traffic" includes rolling-stock of every description, as well as passengers, animals and goods; and

(w) "tramway" means a tramway constructed under the Tramways Act 1886 (XI of 1886), or any special Act relating to tramways.";

(2) clauses (g) and (o) of section 3, sections 4, 5, 6, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 42, 42A, 42B, 43, 44, subsection (2) of sections 46, 46A, 47, 48, 49, 50, 51, 51A, 52, 71A, 71B, 71C, 71D, 71E, 71F, 71G, 71 H, 88, 90 and 91 shall be omitted;

(3) for the words "railway servant" wherever occurring the words "railway employee" shall be substituted;

(4) in sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 45, 46, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 71, 72, 73, 74, 75, 76, 77, 78, 80, 82A, 85, 108, 109, 111, 112, 113, 113A, 114, 115, 118, 119, 122, 125, 130A, 136, 137, 138, 140, 141 and 148, for the words "railway administration: or "administration" wherever occurring, the word "licensee" shall be substituted;

(5) in section 7,-

(a) in subsection (1)

(i) for words and commas "and subject also, in the case of a railway company, to the provisions of any contract between the company and the Government, a railway administration may, for the purpose of constructing a railway or the accommodation or other works connected therewith, and notwithstanding anything in any other

enactment for the time being in force" the words and commas "and subject also, in the case of licensees, to the Provisions of their licence, a railway or the accommodation or other works connected therewith, and notwithstanding anything in any other enactment for the time being in force" shall be substituted; and

(ii) for clause (f), the following shall be substituted, namely:-

"(f) subject to the terms of a licence, do all other acts necessary for making, maintaining, altering or repairing and using the railway"; and

(b) for subsection (2), the following shall, be substituted, namely:-

“(2) The exercise of the powers conferred on a licensee by subsection (1) shall be subject to the control of the Federal Government or, the Authority, as the case may be.
”

(6) in section 9,--

(a) in subsection (1), for the words "Federal Government" the word "Authority" shall be substituted; and

(b) in subsection (2),--

(i) after the word "Government" occurring for the first time, the word and comma "or the Authority, as the case may be" shall be inserted;

(iii) for the words "Federal Government" occurring for the second and third time, the word "Authority" shall be substituted; and

(iv) after the word " subsection" the words "or a licence" shall be inserted.

(7) in sections 13,46, 53, 54, 55, 62, 63, 72, 84, 85, 87, 89, 92, 93, 94, 95, 96, 98, 134 and 136, for the words "Federal Government" or "Government" wherever occurring the word "Authority" shall be substituted.

(8) after section 14, the following new section shall be inserted, namely:--

"14A. The term "licensee" as used in this Chapter means the railway administration or such other licensee who is the holder of an integrated licence the terms of which shall make it the duty of such licensee to carry out the functions set out in this Chapter.",

(9) in section 54, in subsection (1), for the words "this Act or with any general rule there under" the words "with its powers and functions" shall be substituted;

(10) in, section 71, in subsection (1), for the words figures, commas, brackets and letter "under section 47, subsection (1), clause (d)" the words "by rules" shall be substituted;

(11) in Chapter VII, for the title the following shall be substituted, namely:-

"RESPONSIBILITY OF LICENSEES AS, CARRIERS"

(12) in section 72, in subsection (1), after the word "Act" occurring for the first time, the words "and the Ordinance" shall be inserted;

(13) for section 83, the following shall be substituted, namely:-

"83. Report of the railway accidents.- When any of the following accidents occur in the course of working a railway, namely:--

(a) any accident attended with loss of human life, or with grievous hurt as defined in the Pakistan Penal Code (Act XLV of 1860), or with serious injury to property,

(b) any collision between trains of which one is a passenger train

(c) the derailment of any train carrying passengers or of any part of such train;

(d) any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid or with serious injury to property; and

(e) any other accident which the Federal Government on advice of the Authority may notify in this behalf in the, official Gazette;

the licensee working in the railway and, if such accident happens to a train belonging to any other licensee, the other licensee also shall, without unnecessary delay, send notice of the accident to the Federal Government and the Authority and the station-master nearest to the place at which the accident occurred or, where there is no station-master, the railway employee incharge of that section of the railway on which the accident occurred shall, without unnecessary delay, give notice of the accident to the nearest Judicial Magistrate, in which the accident occurred, and the officer incharge of the police station within the local limits of which it occurred. or to such other Magistrate and police officer the Federal Government appoints in this behalf";

(14) in section 84,-

(a) after the word "Act" a comma and the words ", the Ordinance" shall be inserted; and

(b) in clause (c), for the word "Inspectors" the words "the Authority" shall be substituted;

(15) in section 87, for the words "a railway company" the words "the railway administration and a licensee who is the holder of an integrated licence" shall be substituted;

(16) in sections 89, 92, 93 to 98, for the words "railway company" wherever occurring the word "licensee" shall be substituted;

(17) in section 92, the words and figure "section 52 or" shall be omitted:

(18) in section 93, for the word "wagon or truck" wherever occurring the words "rolling stock" shall be substituted;

(19) in section 101,-

(a) in clause (a), after the word "Act" the words "or Ordinance" shall be inserted; and

(b) after clause (d), the following shall be added, namely:-

"(e) by disobeying any provision of this Act or the Ordinance,";

(20) in section 103, after the figure "84" the words "or the Ordinance" shall be added;

(21) in section 105, after the word "Act" the words "or the Ordinance" shall be inserted;

(22) in section 120, for the words "railway carriage" the words "roll stock" shall be substituted;

(23) in section 134, in subsection (1), after the word "Act" the words "or the Ordinance" shall be inserted, and

(24) for section 147, the following shall be substituted, namely:-

“147. Power to exempt railway from the operation of the provisions of the Act. ---The Provincial Government, in relation to sections 8A and 11. and the Federal Government or the Authority, as the case may be, in relation to the remaining provisions of the Act, may, by notification in the official Gazette, exempt any railway from the operation thereof.”.

PART II

2. In the Pakistan Railways Police Act, 1977 (VII of 1977),-

(1) for the preamble, the following shall be substituted, namely:--

"Whereas it is expedient to provide for the constitution and regulation of the Pakistan Railways Police for the safety of passengers and goods transported by licensees, the protection of Railway. the prevention, inquiry and investigation of offences committed in relation to Railway and for the matters connected therewith;"

(2) in section 2, after clause (j), the following shall be inserted:-

"(ja) "railway employee" means railway employee as defined in the Railway Regulatory Authority Ordinance, 2002 (XCII of 2002);";

(3) for the words "railway servant" wherever occurring the words, "railway employee" shall be substituted;

(4) in section 9, in subsection (3), for the words "Pakistan Railways" the word "Railway" shall be substituted;

(5) in section 15, the words "the Chief Executive or" shall be omitted'; and

(6) for section 18, the following shall be substituted, namely:--

"18. Power to make regulations.---The Inspector-General may, with the prior approval in writing of the Federal Government, make regulations consistent with this Act and the rules.