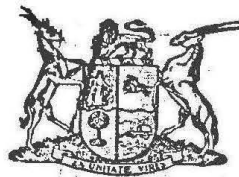


Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Price 20c Prys
Overseas 30c Oorsee
POST FREE—POSVRY

VOL. 132]

CAPE TOWN, 30 JUNE 1976

[No. 5180

KAAPSTAD, 30 JUNIE 1976

DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 1110.

30 June 1976.

No. 1110.

30 Junie 1976.

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

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 90 of 1976: Railway Construction Act, 1976.

No. 90 van 1976: Spoorwegaanlegwet, 1976.

RAILWAY CONSTRUCTION ACT, 1976

Act No. 90, 1976

ACT

To provide for the construction and equipment of certain lines of railway and for matters incidental thereto.

*(Afrikaans text signed by the State President.)
(Assented to 18 June 1976.)*

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. (1) The State President may, as soon after the commencement of this Act as to him may seem expedient, cause to be constructed and equipped, upon a gauge of one thousand and sixty five millimetres, the lines of railway mentioned in column 1 of Schedule 1 to this Act, of the approximate length set out, as to each railway line, in column 2 of that Schedule opposite the description of the line in question, and at a gross cost in the case of each line, approximating the amount set out in column 3 of that Schedule opposite the description of the line in question.

Construction and equipment of certain lines of railway.

(2) The powers conferred by this section shall include the power to construct and equip all sidings, stations, buildings and other appurtenances necessary for or incidental to the proper working of every such line of railway.

(3) The expression "construct and equip" shall include "maintain" while the lines are in the course of construction and equipment.

2. The cost of construction and equipment of the lines of railway authorised by section 1 and mentioned in Schedule 1 to this Act, shall be defrayed as follows:—

Cost of construction and equipment.

(1) In the case of the first line of railway, out of a loan raised by the State President under the authority of law and appropriated for that purpose by Parliament, or out of any other moneys so appropriated.

(2) In the case of the second line of railway, out of money that shall be made available by Richards Bay Iron and Titanium (Pty.) Limited and Tisand (Pty.) Limited.

3. In respect of the construction and equipment of the said lines of railway, the State President shall have the powers conferred by the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act No. 70 of 1957) and the Railway Expropriation Act, 1955 (Act No. 37 of 1955), but subject to the obligations imposed by these Acts: Provided that the width of the land taken shall not exceed thirty-five metres for the construction of a line which is eventually to be doubled and fifty metres for a line which is eventually to be quadrupled together with such additional land as may be required for the slopes, cuttings, drainage, stations, approach roads and other works and matters which may be necessary for the purpose of the lines.

Powers incidental to construction and equipment.

RAILWAY CONSTRUCTION ACT, 1976

Act No. 90, 1976

4. The agreements concluded respectively on 19 November 1975, and 18 February 1976, between the Government of the Republic in its Railways and Harbours Administration (hereinafter called "the Administration"), and—

Ratification of certain agreements relating to lines of railway from—

(a) South African Iron and Steel Industrial Corporation, Limited, a translation of which is set out in Schedule 2 to this Act; and

(a) Thabazimbi to a terminal on the farm Naauw Ontkomen, and

(b) Richards Bay Iron and Titanium (Pty.) Limited and Tisand (Pty.) Limited, a translation of which is set out in Schedule 3 to this Act,

(b) Nseleni to a terminal on Lot K.44 No. 13587.

are hereby ratified and confirmed, and the Administration is hereby empowered to do whatever may be necessary to give effect to the said agreements.

5. This Act shall be called the Railway Construction Act, 1976.

Schedule 1

LINES OF RAILWAY AUTHORISED BY SECTION 1

Column 1	Column 2	Column 3
Description of line	Approximate length	Estimated cost
	Kilometres	R
1. From a junction at Thabazimbi, the terminal point of the Northam—Thabazimbi line, to a terminal point on the farm Naauw Ontkomen in the Magisterial District of Waterberg, (Province of the Transvaal)	113	41 000 000
2. From a junction at Nseleni, on the Empangeni—Golela line, to a terminal point on Lot K. 44 No. 13587 situated in the County of Zululand (Province of Natal)	7	2 352 000

RAILWAY CONSTRUCTION ACT, 1976

Act No. 90, 1976

Schedule 2

TRANSLATION OF MEMORANDUM OF AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA IN ITS RAILWAY AND HARBOURS ADMINISTRATION, OF THE ONE PART AND THE SOUTH AFRICAN IRON AND STEEL INDUSTRIAL CORPORATION, LIMITED, OF THE OTHER PART

MEMORANDUM OF AGREEMENT made and entered into between the GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA in its RAILWAYS AND HARBOURS ADMINISTRATION (hereinafter referred to as "the Administration"), herein represented by the MINISTER OF TRANSPORT of the Republic of South Africa, of the one part, and the SOUTH AFRICAN IRON AND STEEL INDUSTRIAL CORPORATION, LIMITED, constituted and incorporated under the provisions of the Iron and Steel Industrial Act, 1928 (Act No. 11 of 1928) (hereinafter referred to as "the Corporation"), of the other part.

WHEREAS the Corporation has petitioned the Administration to construct, equip, maintain and work a line of railway of a gauge of 1 065 mm from Thabazimbi to a terminal point on the farm Naauw Ontkomen, in the Magisterial District of Waterberg, Province of the Transvaal, a distance of approximately 113 kilometres (hereinafter termed "the railway") for the conveyance of traffic to and from an area in which the Corporation is carrying on, or is otherwise interested in, certain mining operations;

AND WHEREAS the Administration has agreed, if and when authorised by Parliament to do so, to construct, equip, maintain and work the railway, subject to the terms and conditions hereinafter set forth;

Now, THEREFORE, the parties do hereby agree as follows:—

1. Pending the approval and sanction of Parliament, which the Administration proposes to seek as soon as may be practicable after the execution of this Agreement, the obligations of the Administration under this Agreement shall be taken to be provisional only. Should the construction of the railway not be authorised by Parliament within a period of twelve months from the date hereof, this Agreement shall lapse, unless renewed by mutual consent.

2. (1) After the commencement of an Act of Parliament authorising the construction and equipment of the railway and ratifying this Agreement, and subject to an appropriation by Parliament of funds for the purpose, the Administration shall proceed with all reasonable expedition to construct and equip the railway; Provided that the Administration shall not be liable for any delay in completing the construction and equipment of the railway owing to any cause whatever over which the Administration has no control.

(2) The Administration shall have the right, after consultation with the Corporation, to construct or provide from time to time such additional tracks or other facilities directly connected with the railway as it may deem necessary in order to enable it efficiently to cope with any increase in traffic over the railway. The cost of additional or improved tracks or other facilities so constructed or provided shall be deemed to form part of the cost of construction and equipment of the railway for the purposes of this Agreement.

3. (1) Subject to the approval of Parliament, the Administration shall provide the money necessary for the construction and equipment of the railway, the estimated cost of which is approximately forty-one (41) million rand excluding rolling-stock.

(2) The route of the railway and the sites of stations and sidings shall be approximately as shown on the plan annexed hereto and signed by both parties: Provided that the Administration may, after consultation with the Corporation, modify, for engineering exigencies only, the route of the railway and the sites of stations and sidings, subject to any limitation imposed by the statutory authority under which the railway is constructed.

4. (1) The railway shall be constructed and equipped according to the standards adopted by the Administration for other lines of similar type, and shall be constructed with S.A.R. rails of a weight of not less than 48 kg per metre.

(2) For the purpose of this Agreement the cost of construction and equipment of the railway shall include all items of expenditure, including interest, chargeable to the railway in accordance with the Administration's usual accounting practice, as well as all costs incurred by the Administration on the survey of the route of the railway which amount will be refunded to the Administration by the Corporation in the event of the railway not being built at the request of the Corporation for whatever reason, but excluding any amount/s repaid by the Corporation to the Administration in terms of clause 9 hereof, and excluding also the cost of locomotives, other rolling-stock and any moveable equipment used in connection with rolling-stock in the working of the railway after completion.

5. (1) When the railway has been completed and has been certified by the Administration's Chief Civil Engineer as being ready for the conveyance of public traffic, it shall forthwith be opened by the Administration for the conveyance of public traffic.

(2) Subject to the provisions of clause 6, the fares, charges and rates for the conveyance over the railway line of passengers, parcels, livestock and goods of any description, and related services, shall be those fixed by the Administration from time to time and applicable generally over its railway system.

(3) Nothing contained in this Agreement shall be deemed to diminish or restrict in any way the Administration's statutory power to fix and alter rates and fares.

RAILWAY CONSTRUCTION ACT, 1976

Act No. 90, 1976

6. (1) Subject to the provisions hereinafter set forth, the Corporation undertakes during the period of thirty (30) years mentioned in clause 7 hereof, to hold itself liable for, and to pay to the Administration, in respect of all traffic (excluding passengers, parcels, baggage and mail) consigned by it or on its behalf by train over the railway or a portion thereof in the direction of Thabazimbi, a special surcharge, as hereinafter provided, in addition to the normal tariff prescribed from time to time in the Official Railway Tariff Book for the conveyance of any such commodity over the Administration's railway system generally. It is agreed that, if it should become evident that the level of the surcharge is materially affected by the conveyance of passengers, parcels, baggage and mail, the Administration shall take steps to also levy a special surcharge, the amount of which the Administration will determine in the light of circumstances, in respect of this traffic. The moneys accruing to the Administration from such special surcharge shall be used to—

- (a) defray any losses which, during the period of thirty (30) years, may be sustained in the working of the railway on the basis set out in clause 5 (2) hereof, it being specifically understood that the cost of the capital invested in the railway shall not be taken into account in determining such operating loss; and
- (b) build up a fund which will provide for recovery of the capital invested in the railway, including interest charges on the remaining balance of the said capital investment, within the period of thirty (30) years.

(2) From the date on which the railway is opened for the conveyance of public traffic, the special surcharge mentioned in subclause (1) hereof shall initially be levied at the rate of six comma three (6,3) cents per one hundred (100) kilogram. The surcharge of six comma three (6,3) cents per one hundred (100) kilogram is based on the conveyance over the railway of 3,64 million tons of coking coal per annum in equal quantities to the Corporation's steel works at Vanderbijlpark and Newcastle in air-brake coal trucks of 76 per train. On the first day of April and October of each year for so long as may be necessary in accordance with subclause (1) hereof, the Administration shall, in consultation with the Corporation, review the rate of the afore-mentioned special surcharge, as it is applicable then, in order to ensure that the amount accruing to the Administration, during the financial year in question, by way of the special surcharge in terms of this clause and clause 10 hereof, shall tally, as nearly as may be, with the amount by which the working costs of the railway plus the amount required in terms of subclause (1) (b) hereof, exceed the normal tariff income derived from the railway. The amount required for the financial year concerned in terms of subclause (1) (b) hereof shall, for this purpose, take proper account of the likely tonnages to be consigned over the remainder of the said thirty (30) year period and the amounts to be paid as special surcharge in respect of such tonnages. Depending on what may seem to be necessary in order to attain this object, the rate of the afore-mentioned special surcharge shall at the time of such review, be either increased or decreased or left unchanged for the ensuing period of six months.

7. (1) From the date of opening of the railway for public traffic and for each financial year of the Administration thereafter for a period of thirty (30) years, the Administration shall prepare and maintain accounts to indicate the results of working the railway, and a copy of each annual statement shall be supplied to the Corporation at its offices in Ellisras as soon as practicable after the close of each financial year. The accounts shall be prepared in accordance with the Administration's usual accounting practice and the annual statement shall give particulars of expenditure and revenue as well as of the amount credited to the fund referred to in the clause 6 (1) (b) hereof and shall indicate the rate of interest charges applicable to the balance of the capital invested in construction and equipment.

(2) If, in any one financial year, the results of the working of the railway referred to in clause 6 (1) (a) hereof, calculated as provided in subclause (1) of this clause, show a surplus, the Corporation shall have no claim thereto but such surplus shall be retained by the Administration and shall be credited to the fund referred to in clause 6 (1) (b) hereof.

(3) If, in any one year, the results of the working of the railway, referred to in clause 6 (1) (a) hereof, show a loss, as assessed by the Administration in accordance with its usual accounting practice, the Corporation undertakes to make good such loss to the Administration within thirty (30) days after it has been notified by the Administration of the amount of such loss. Interest based on the current investment rate applicable to the Administration's permanent investments at the commencement of the particular financial year, shall be payable by the Corporation on any amounts outstanding in respect of working losses after the said period of thirty (30) days has lapsed.

(4) The interest charges referred to in clauses 4 (2), 6 (1) (b) and subclause (1) of this clause shall be assessed at the weighted average rate applicable to new Loan Funds of the Administration at the time of investment in construction and equipment.

8. (1) Settlement between the parties to the Agreement will be effected at the end of the period of thirty (30) years referred to in clause 7 hereof.

(2) If the results of the working of the railway, referred to in clause 6 (1) (a) hereof, for the period from the closing date of the last whole financial year of the Administration within the period of thirty (30) years up to the expiry date of the said period of thirty (30) years show a loss, as assessed by the Administration in accordance with its usual accounting practice, such loss shall be defrayed in terms of clause 7 (3) hereof.

(3) If the results of the working of the railway, referred to in clause 6 (1) (a) hereof, for the period from the closing date of the last financial year of the Administration within the period of thirty (30) years up to the expiry date of the said period of thirty (30) years show a surplus, as assessed by the Administration in accordance with its usual accounting practice, the Corporation

RAILWAY CONSTRUCTION ACT, 1976

Act No. 90, 1976

shall have no claim to such surplus but such amount shall be added to the moneys mentioned in clause 6 (1) (b) hereof.

(4) If, at the end of the said period of thirty (30) years, the amount required in terms of clause 6 (1) (b) has not been recovered in full, the Corporation undertakes to make good the amount outstanding to the Administration within thirty (30) days after notification thereof. Interest in accordance with clause 7 (4) shall be payable by the Corporation on any amounts outstanding after the said period of thirty (30) days has lapsed.

(5) If, at the end of the said period of thirty (30) years, the amount which has been recovered in terms of clause 6 (1) (b) is in excess of the amount required, the Corporation shall have no claim to such surplus.

(6) Once settlement has been effected between the parties at the end of the said period of thirty (30) years, in accordance with the provisions of this clause—

- (a) the railway shall remain an asset of the Administration without any payment or compensation whatsoever by the Administration to the Corporation;
- (b) the special surcharge shall be withdrawn and the Corporation shall thereafter be under no further obligation to reimburse the Administration for losses that may be incurred in the working of the railway; and
- (c) the Administration shall cease to maintain the financial statements referred to in clause 7, or to consult the Corporation in accordance with clauses 3 and 11 hereof.

9. (1) The Corporation hereby agrees to repay to the Administration on demand, or within such period as the Administration may in its discretion determine, the total amount of—

- (a) any compensation which the Administration may have paid to a third party or parties whose rights to minerals of whatever nature have been expropriated or injuriously affected as a result of the construction of the railway, in that, by reason of the operation of the Mining Laws, the mining of such minerals under or in the vicinity of the railway is prohibited or restricted; and
- (b) any legal costs incurred by the Administration in settling or contesting any claim for compensation preferred against it by an owner or third party:

Provided that nothing in this subclause contained shall be deemed to impose on the Corporation any obligation with respect to any minerals, or the injurious affection of any rights to minerals, underlying any land traversed by the railway of which the Administration is the owner at the date of construction and equipment of the railway.

(2) The Administration shall forthwith take all reasonable and proper steps to settle, on the most advantageous terms, all claims for compensation preferred against it by owners and/or third parties as aforesaid, and shall consult the Corporation before arriving at a final settlement with any such a claimant. If any such claim cannot be settled out of court on terms which, in the opinion of the Corporation are fair and reasonable, the Administration shall, at the risk and expense of the Corporation contest any legal proceedings which the claimant may bring against it for the determination of the amount of the compensation payable. The Administration undertakes that, in regard to the manner in which and the extent to which any such proceedings are to be contested it will, if practicable, act in accordance with and give effect to such directions as may be given to it by the Corporation from time to time as long as the proceedings continue, including directions to pay any amount into court, or to settle the claim at a mutually agreed upon figure, or to appeal or not to appeal against any judgment or order of the court of first instance.

(3) It is hereby agreed that if, as a result of the construction of the railway, rights to minerals of whatever nature vested in the Corporation (whether such rights were acquired before or after the date of this Agreement) are expropriated together with the ownership in the land for the railway, or are injuriously affected as a result of the construction of the line in that, by reason of the operation of the Mining Laws, the mining of such minerals under or in the vicinity of the railway is prohibited or restricted, the Corporation shall hereby unconditionally release the Administration from any and all liability to compensate it, its successors or assigns, in respect of the injurious affection, as aforesaid, of such rights to minerals.

10. The Administration undertakes, for as long as the Corporation remains under obligation to pay the special surcharge mentioned in clause 6 (1) hereof, to make provision in the Official Railway Tariff Book for the payment of a like surcharge at the same rate per one hundred (100) kilogram on all traffic (excluding passengers, parcels, baggage and mail where this traffic does not materially affect the level of surcharge) consigned by or on behalf of any other senders by train over the railway or any portion thereof in the direction of Thabazimbi, and that all moneys derived from such surcharge will be dealt with as provided in clause 7 of this Agreement.

11. There shall be no restriction on the running powers of the Administration in respect of any class of traffic whatsoever over the railway, and the Administration may construct any line/s of railway, and consent to the construction of private sidings as an extension of or as a branch from the railway: Provided that before constructing any such line/s of railway or consenting to the construction of any such private siding, the Administration shall consult the Corporation and shall take into consideration all representations that the Corporation may make with respect thereto.

RAILWAY CONSTRUCTION ACT, 1976

Act No. 90, 1976

12. It is agreed that, in the event of the Corporation wishing to consider other means of conveyance for its products during a period of thirty (30) years from the date of opening of the railway for traffic, the Administration's prior approval shall be obtained.

SIGNED for and on behalf of the Government of the Republic of South Africa in its Railways and Harbours Administration at Pretoria on this the 19th day of November 1975.

(Signed) S. L. MULLER
Minister of Transport

AS WITNESSES:

1. (Signed) G. BASSON
2. (Signed) J. M. MULLER

SIGNED for and on behalf of the SOUTH AFRICAN IRON AND STEEL INDUSTRIAL CORPORATION, LIMITED, at Pretoria on this the 3rd day of October, 1975 under the authority of a resolution of the Board of Directors of the Corporation dated the 24th day of September, 1975.

(Signed) L. DUNCKER
Managing Director

AS WITNESSES:

1. (Signed) B. C. ALBERTS
2. (Signed) J. GILLILAND

Schedule 3

TRANSLATION OF MEMORANDUM OF AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA IN ITS RAILWAYS AND HARBOURS ADMINISTRATION, OF THE ONE PART AND RICHARDS BAY IRON AND TITANIUM (PTY.) LIMITED AND TISAND (PTY.) LIMITED, OF THE OTHER PART.

MEMORANDUM OF AGREEMENT made and entered into between the GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA in its RAILWAYS AND HARBOURS ADMINISTRATION (hereinafter referred to as "the Administration"), herein represented by the MINISTER OF TRANSPORT of the Republic of South Africa, of the one part, and RICHARDS BAY IRON AND TITANIUM (PTY.) LIMITED and TISAND (PTY.) LIMITED, being companies incorporated with limited liability under the Companies Act, 1926 (hereinafter referred to as "the Companies"), of the other part.

WHEREAS the Companies have offered to construct and equip, at their own cost, and have petitioned the Administration to maintain and work a line of railway of a gauge of one thousand and sixty-five (1 065) millimetres from Nseleni station to a terminal point on Lot K.44 No. 13587 situated in the County of Zululand, Province of Natal, a distance of approximately seven (7) kilometres (hereinafter termed "the railway") for the conveyance of traffic to and from an area in which the Companies are carrying on, or are otherwise interested in, certain mining operations and smelting works;

AND WHEREAS the Administration has agreed, if and when authorised by Parliament to do so, to expropriate the land required for the construction of the railway at the cost of the Companies, or to acquire it in some other manner, and to allow the Companies to construct and equip the railway, including any alterations and/or additions required at the existing Nseleni station as a result of the construction of the railway, and thereafter to take over the railway as an asset and maintain and work it subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties do hereby agree as follows:

1. Pending the approval and sanction of Parliament, which the Administration proposes to seek as soon as may be practicable after the execution of this Agreement, the obligations of the Administration under this Agreement shall be taken to be provisional only. Should the construction of the railway not be authorised by Parliament within a period of twelve months after signing hereof, this Agreement shall lapse, unless renewed by mutual consent.

2. (1) After the promulgation of an Act of Parliament authorising the construction and equipment of the railway and ratifying this Agreement, the Administration shall, at the cost of the Companies, proceed with all reasonable expedition to expropriate or otherwise acquire the land (including rights to minerals if deemed desirable by the Administration) required for the construction and equipment of the railway: Provided that the Administration shall not be liable for any delay or other problem encountered in acquiring the land required for the construction and equipment of the railway owing to any cause whatever over which the Administration has no control. The nature and amount of compensation, whether in cash or in kind, for any land or other rights acquired in accordance with this clause shall be determined by the Administration in its sole discretion.

RAILWAY CONSTRUCTION ACT, 1976

Act No. 90, 1976

(2) The Administration shall have the right, after consultation with the Companies, to construct or provide from time to time, at the Administration's cost, such additional or improved railway tracks or other facilities directly connected with the railway as it may deem necessary to enable it to cope efficiently with any traffic over the railway. The cost of additional or improved railway tracks or other facilities so constructed or provided shall be deemed to form part of the cost of construction and equipment of the railway for the purposes of this Agreement.

3. (1) The estimated capital investment in the construction and equipment of the railway will amount to approximately two million three hundred and fifty-two thousand rand (R2 352 000).

(2) The route of the railway and the location of stations and sidings shall be approximately as shown on the plan annexed hereto and signed by both parties.

4. The railway shall be constructed and equipped by the Companies according to the standards adopted by the Administration for similar lines and shall be constructed with rails of a mass of not less than forty-eight (48) kilogram per metre.

5. (1) When the railway is completed and the Administration's Chief Civil Engineer has certified that it is ready for the conveyance of public traffic, it shall forthwith be taken over as an asset of the Administration and opened for the conveyance of public traffic. The Companies shall, however, receive no credit or payment in respect of the capital investment in the construction and equipment of the railway on that date but shall, during the period of twenty (20) years mentioned in clause 8 hereof, be compensated for the capital costs involved in the manner set out in clause 7 (1) hereof.

(2) Subject to the provisions of clause 6 hereof, the fares, charges and rates for the conveyance of passengers, parcels, livestock and all classes of goods, and related services, shall be those fixed by the Administration from time to time and applicable generally over its railway system, or such special contract rate as may be agreed upon.

(3) Nothing contained in this Agreement shall be deemed to diminish or restrict in any way the Administration's statutory power to fix and alter rates and fares.

6. (1) It is specifically understood that the under-mentioned procedure, whereunder a special surcharge shall be levied on the outgoing traffic consigned by or on behalf of the Companies and which, *inter alia*, makes provision for the recovery of the capital invested in the construction and equipment of the railway, has been adopted solely with a view to arriving at a basis on which the capital costs can be recovered on all traffic (excepting passengers, parcels, baggage and mail) consigned over the railway or portion thereof.

(2) Having regard to the terms of subclause (1) of this clause, and subject to the provisions hereinafter set forth, the Companies undertake during the period of twenty (20) years mentioned in clause 8 hereof, to hold themselves liable for, and to pay to the Administration, in respect of all traffic (excepting passengers, parcels, baggage and mail) consigned by them or on their behalf by train over the railway or a portion thereof in the direction of Nseleni, a special surcharge, as hereinafter provided, in addition to the normal tariff prescribed from time to time in the Official Railway Tariff Book for the conveyance of such commodity over the Administration's railway system generally. It is agreed that if it should become evident that the level of the surcharge is materially affected by the conveyance of passengers, parcels, baggage and mail, the Administration shall take steps to also levy a special surcharge on this traffic, the amount of which the Administration will determine in the light of circumstances. The moneys accruing to the Administration from such special surcharge shall be used to—

- (a) defray any losses which, during the period of twenty (20) years, may be sustained in the working of the railway on the basis set out in clause 5 (2) hereof, it being specifically understood that the cost of the capital invested in the railway by the Companies shall not be taken into account in determining such operating loss; and
- (b) recover the capital invested in the construction and equipment of the railway, including interest charges at eleven (11) per cent per annum on the remaining balance of the said capital investment, within the period of twenty (20) years referred to in clause 8 hereof, or until such time as the capital invested by the Companies has been accounted for, whichever is the shortest.

(3) From the date on which the railway is opened for the conveyance of public traffic, the special surcharge mentioned in subclause (1) hereof shall initially be levied at the rate of ten (10) cents per one hundred (100) kilogram. On the first day of April and October of each year for so long as may be necessary in accordance with subclause (2) hereof, the Administration shall, in consultation with the Companies, review the rate at which the afore-mentioned special surcharge is levied to ensure that the amount accruing to the Administration during the financial year in question by way of the special surcharge in terms of this clause and clause 11 hereof, shall tally, as nearly as may be, with the amount by which the working costs of the railway plus the amounts required in terms of subclause (2) (b) hereof, exceeds the revenue derived from the railway before taking into account the amount accruing from the afore-mentioned special surcharge. Depending on what may seem to be necessary to attain this object, the rate of the afore-mentioned special surcharge shall at the time of such review, be either increased or decreased or left unchanged for the ensuing period of six months.

7. (1) The Administration undertakes to—

- (a) credit and pay to the Companies monthly, in the ratio of seventy-five (75) per cent in respect of Richards Bay Iron and Titanium (Pty.) Limited and twenty-five (25) per cent in respect of Tisand (Pty.) Limited, that portion of the special surcharge provided for

RAILWAY CONSTRUCTION ACT, 1976

Act No. 90, 1976

in clause 6 (2) (b) hereof, calculated on outgoing traffic consigned over the railway by or on behalf of the Companies; and

- (b) credit and pay to the Companies, in the ratio indicated in subclause (1) (a) of this clause, at the end of each of the Administration's financial years, that portion of the tariff rate and/or special surcharge which represents contributions towards the capital costs of the capital invested by the Companies in construction and equipment of the railway, calculated at an interest rate of eleven (11) per cent per annum on the remaining balance of the said capital investment, in respect of all traffic consigned over the line, but excluding the credit allowed for under subclause (1) (a) of this clause.

(2) It is agreed that, should the capital invested by the Companies in the construction and equipment of the railway be fully accounted for before the expiry date of the period of twenty (20) years mentioned in clause 8 hereof, the Companies shall not be entitled to any further credits in respect of capital costs, and the portion of the special surcharge provided for in clause 6 (2) (b) hereof shall be withdrawn.

8. (1) From the date of opening of the railway for public traffic and for each of the Administration's financial years thereafter for a period of twenty (20) years, the Administration shall prepare and maintain accounts to indicate the results of working the railway, and a copy of each annual statement shall be supplied to the Companies at their office/s in Johannesburg as soon as practicable after the closing of each financial year. The accounts shall be prepared in accordance with the Administration's usual accounting practice and the annual statement shall give particulars of expenditure and revenue as well as of the amount of the capital investment accounted for, as referred to in clause 6 (2) (b) hereof.

(2) If, in any financial year, the results of the working of the railway referred to in clause 6 (2) (a) hereof, calculated in accordance with subclause (1) of this clause, show a surplus, such surplus shall be credited and paid to the Companies in the same manner as provided for in clause 7 (1) (b) hereof until the capital invested in the construction and equipment of the railway has been fully accounted for. The Companies shall, however, have no claim thereto after the said capital investment has been fully accounted for, and during the remainder of the said period of twenty (20) years such surpluses shall be retained by the Administration.

(3) If, in any year, the results of the working of the railway, referred to in clause 6 (2) (a) hereof, show a loss, as assessed by the Administration in accordance with its usual accounting practice, the Companies undertake to make good such loss to the Administration, in the ratio indicated in clause 7 (1) (a), within thirty (30) days after they have been notified by the Administration of the amount of such loss. Interest based on the rate applicable to the Administration's latest permanent investment made within the preceding twelve months, or if no investment was made, at the rate of interest applicable to the latest permanent investment made by the Public Debt Commissioners during the said period, shall be payable by the Companies in the ratio indicated in clause 7 (1) (a) on any amounts outstanding in respect of working losses after the said period of thirty (30) days has lapsed.

9. (1) Settlement between the parties to the Agreement shall be effected at the end of the period of twenty (20) years referred to in clause 8 hereof.

(2) If the results of the working of the railway, referred to in clause 6 (2) (a) hereof, for the period from the closing date of the last whole financial year of the Administration within the period of twenty (20) years up to the date on which the said period of twenty (20) years expires, show a loss, as assessed by the Administration in accordance with its usual accounting practice, such loss shall be defrayed in terms of clause 8 (3) hereof.

(3) If the results of the working of the railway referred to in clause 6 (2) (a) hereof, for the period from the closing date of the last financial year of the Administration within the period of twenty (20) years up to the date on which the said period of twenty (20) years expires, show a surplus, as assessed by the Administration in accordance with its usual accounting practice, the Companies shall have no claim to such surplus.

(4) After settlement between the parties at the end of the said period of twenty (20) years, in accordance with the provisions of this clause—

- (a) the railway shall remain an asset of the Administration without any payment or further compensation whatsoever by the Administration to the Companies;
- (b) the special surcharge, if applicable at that time, shall be withdrawn and the Companies shall thereafter be under no further obligation to reimburse the Administration for losses that may be incurred in the working of the railway; and
- (c) the Administration shall cease to maintain the financial statements referred to in clause 8, or to consult the Companies in accordance with clauses 2 (2) and 12 hereof.

10. (1) The Companies hereby agree to repay to the Administration, in the ratio indicated in clause 7 (1) (a), on demand, or within such period as the Administration may in its discretion determine after consultation with the Companies, the total amount of—

- (a) the cost of expropriating or otherwise acquiring the land required for the construction and equipment of the railway;

RAILWAY CONSTRUCTION ACT, 1976

Act No. 90, 1976

- (b) any compensation which the Administration may have paid to a third party or parties whose rights to minerals of whatever nature have been expropriated or injuriously affected as a result of the construction of the railway, in that, by reason of the operation of the Mining Laws, the mining of such minerals under or in the vicinity of the railway is prohibited or restricted; and
- (c) any legal costs incurred by the Administration in settling or contesting any claim for compensation preferred against it by a third party:

Provided that nothing in this subclause contained shall be deemed to impose on the Companies any obligation with respect to minerals, or the injurious affection of any rights to minerals, of which the Administration is the owner at the date of this Agreement.

(2) The Administration shall forthwith take all reasonable and proper steps to settle, on the most advantageous terms, all claims for compensation preferred against it by third parties as mentioned in subclause (1) (b) of this clause, and shall consult the Companies before arriving at a final settlement with such a claimant. If any such claim cannot be settled out of court on terms which, in the opinion of the Companies, are fair and reasonable, the Administration shall, at the risk and expense of the Companies, in the ratio indicated in clause 7 (1) (a), contest any legal proceedings which the claimant may bring against the Administration for the determination of the amount of the compensation payable. The Administration undertakes that, in regard to the manner in which and the extent to which any such proceedings are to be contested, it will, if practicable, act in accordance with and give effect to such directions as may be given to it by the Companies from time to time as long as the proceedings continue, including directions to pay any amount into court, or to settle the claim at a mutually agreed upon figure, or to appeal or not to appeal against any judgment or order of the court of first instance.

(3) It is hereby agreed that if, as a result of the construction of the railway, rights to minerals of whatever nature vested in the Companies jointly and severally (whether such rights were acquired before or after the date of this Agreement) are expropriated together with the ownership in the land for the railway, or are injuriously affected as a result of the construction of the line in that, by reason of the operation of the Mining Laws, the mining of such minerals under or in the vicinity of the railway is prohibited or restricted, the Companies hereby unconditionally release the Administration from any and all liability to compensate them, their successors or assigns in respect of the injurious affection, as aforesaid, of such rights to minerals.

11. The Administration undertakes, for as long as the Companies remain under obligation to pay the special surcharge mentioned in clause 6 (2) hereof, to make provision in the Official Railway Tariff Book for the payment of a like surcharge at the same rate per one hundred (100) kilogram on all traffic (excluding passengers, parcels, baggage and mail where this traffic does not materially affect the level of surcharge) consigned by or on behalf of other senders by train over the railway or a portion thereof in the direction of Nseleni and that all moneys derived from such surcharge will be dealt with as provided in clauses 6 and 7 of this Agreement.

12. There shall be no restriction on the running powers of the Administration in respect of any class of traffic whatsoever over the railway, and the Administration may construct any line/s of railway, and consent to the construction of private sidings as an extension of or as a branch from the railway: Provided that before constructing any such line/s of railway or consenting to the construction of any such private siding, the Administration shall consult the Companies and shall take into consideration all representations that the Companies may make with respect thereto.

13. It is agreed that, in the event of the Companies wishing to consider other means of conveyance for their products during a period of twenty (20) years from the date of opening of the railway for traffic, the Administration's prior approval shall be obtained.

SIGNED for and on behalf of the Government of the Republic of South Africa in its Railways and Harbours Administration at Cape Town on this the 18th day of February, 1976.

(Signed) S. L. MULLER
Minister of Transport

As WITNESSES:

1. (Signed) G. BASSON
2. (Signed) J. M. MULLER

SIGNED for and on behalf of RICHARDS BAY IRON AND TITANIUM (PTY.) LIMITED, at Johannesburg on this the 2nd day of February, 1976 under the authority of a resolution of the Board of Directors of the Company dated the 22nd day of October, 1975.

(Signed) P. J. VAN ROOY
Director

As WITNESSES:

1. (Signed) J. K. ENGELBRECHT
2. (Signed) T. MINNAAR

SIGNED for and on behalf of TISAND (PTY.) LIMITED, at Johannesburg on this the 2nd day of February, 1976 under the authority of a resolution of the Board of Directors of the Company dated the 27th day of January 1976.

(Signed) P. J. VAN ROOY
Director

As WITNESSES:

1. (Signed) J. K. ENGELBRECHT
2. (Signed) T. MINNAAR