

No. 57, 1961.]

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.

# ACT

**To provide for the construction and equipment of a line of railway between Hoedspruit and Phalaborwa in the Province of the Transvaal, and for matters incidental thereto.**

*(English text signed by the State President.)  
(Assented to 24th June, 1961.)*

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

Construction and equipment of line of railway between Hoedspruit and Phalaborwa.

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 three feet six inches, a line of railway of a length of approximately thirty-one and a half miles between Hoedspruit and Phalaborwa in the Province of the Transvaal, at a gross cost not exceeding four million one hundred and thirty-three thousand six-hundred and sixty-eight rand.

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

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

Cost of construction and equipment.

2. The cost of the construction and equipment authorized by section *one* shall be defrayed out of any 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.

Powers incidental to construction and equipment.

3. In respect of the construction and equipment of the said line of railway, the State President shall have the powers conferred by the Railway Expropriation Act, 1955 (Act No. 37 of 1955), but subject to the obligations imposed by that Act: Provided that the width of the land taken shall not exceed one hundred Cape feet for the construction of the line, 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 line.

Ratification of certain agreement relating to line of railway from Hoedspruit to Phalaborwa.

4. The agreement concluded on the fifth day of June, 1961, between the Government of the Republic in its Railways and Harbours Administration (hereinafter called "the Administration"), and the Phosphate Development Corporation (Proprietary) Limited, a translation of which is set out in the Schedule to this Act, is hereby ratified and confirmed, and the Administration is hereby empowered to do all such things as may be necessary to give effect to the said Agreement.

Short title.

5. This Act shall be called the Railway Construction Act, 1961.

## Schedule.

## 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 THE PHOSPHATE DEVELOPMENT CORPORATION (PROPRIETARY) 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 PHOSPHATE DEVELOPMENT CORPORATION (PROPRIETARY) LIMITED, a company incorporated with limited liability under the Companies Act, 1926 (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 three feet six inches from Hoedspruit (on the Selati railway line) to a terminal point at Phalaborwa in the Magisterial District of Letaba, Province of the Transvaal, a distance of approximately thirty-one and a half miles (hereinafter termed "the railway") for the purpose of conveying 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 authorized 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 authorized 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 authorizing the construction and equipment of the railway and ratifying and confirming 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) While the parties visualize that only two interloops are initially to be provided as part of the railway, it is agreed that the Administration shall nevertheless, in constructing the railway, carry out the earthworks for four interloops, and that 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 any additional 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, estimated to amount to approximately four million one hundred and thirty-three thousand six hundred and sixty-eight rand (R4,133,668) 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 sixty pounds per yard.
- (2) For the purpose of this Agreement the cost of construction and equipment of the railway shall comprise all items of expenditure, including interest, chargeable to the railway in accordance with the Administration's usual accounting practice, but excluding the capital cost of locomotives, other rolling stock and any 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 of passengers, parcels, livestock and goods of any description, and for the services incidental thereto, 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.

6. (1) Subject to the provisions hereinafter set forth, the Corporation undertakes, for so long as a loss may be sustained in the exploitation of the railway on the basis of the fares, charges and rates generally applicable over the Administration's railway system, to hold itself liable for, and to pay to the Administration, for every ton of 2,000 lbs. of base mineral traffic consigned by it or on its behalf, over the railway or a portion thereof in the direction of Hoedspruit, a special surcharge over and above 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. The moneys accruing to the Administration from such special surcharge shall be dealt with in the manner hereinafter provided.
- (2) For a period of six months from the date on which the railway is opened for the conveyance of public traffic, the special surcharge mentioned in sub-clause (1) hereof shall be levied at the rate of one rand five cents (R1.05) per ton. At the expiration of the said period of six months, and every six months thereafter, for so long as may be necessary in accordance with sub-clause (1) hereof, the Administration shall, in consultation with the Corporation, review the rate of the afore-mentioned special surcharge in order to ensure that the amount accruing to the Administration by way of the special surcharge during the financial year in question, shall tally, as nearly as may be, with the amount by which the working costs of the railway exceed the revenue derived therefrom, without taking into account the amount accruing from the aforementioned special surcharge. Depending on what may seem to be necessary in order to attain this object, the rate of the aforementioned special surcharge shall, at the time of such review, be either increased or decreased or left undisturbed for the ensuing period of six months.
- (3) For the purposes of this clause and of clause 11, the term "base mineral traffic" shall mean—
- (a) phosphate concentrates;
  - (b) fertilizer;
  - (c) any base minerals, whether crude or partly or wholly processed in the Magisterial District of Letaba;
  - (d) any other product, material or article which the Minister of Transport has, after consultation between the Corporation and the General Manager of the South African Railways, by Notice in the *Government Gazette* declared to be included under that term for the purposes of this Agreement.
7. (1) From the date of opening of the railway for public traffic and for each financial year 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 office in Phalaborwa 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 (with separate reference to the moneys accruing to the Administration from the aforementioned special surcharge) and shall indicate the rates of depreciation and interest charges applied on the capital cost of construction and equipment. It is specifically declared that, for the purpose of calculating such working results, the amount derived from the aforementioned special surcharge paid by the Corporation and the other senders referred to in clause 11, shall be regarded as part of the revenue earned by the railway.
- (2) (a) At the end of each period of five years, calculated from the date on which the railway is officially opened for public traffic, it shall be determined from the annual statements referred to in sub-clause (1) hereof, due regard being had to the provisions of paragraphs (b) to (f) of this sub-clause, whether the results of working the railway during the period of five years in question, show a loss or a surplus, and settlement between the parties shall then be effected as hereinafter set forth in this sub-clause.
- (b) If the working results of the railway for any financial year included in such period of five years show a surplus, such surplus shall be retained by the Administration but shall be set off against any loss which has been or may be incurred in the working of the railway during any other financial year included in the same period of five years.
- (c) If the working results of the railway show a surplus over any period of five years as set forth in paragraph (a) of this sub-clause, the Corporation and/or the senders referred to in clause 11, shall have no claim thereto but such surplus shall, depending on the circumstances, either be retained by the Administration or dealt with as prescribed in paragraph (d) of this sub-clause.
- (d) If the special surcharge was levied during any portion of such a period of five years, it shall be determined whether a loss would have been incurred in the working of the railway during such period of five years had the special surcharge not been levied. Should it be found that no loss would have been incurred, the whole of the proceeds of the special surcharge during the said period of five years shall be used to defray any loss and/or interest on losses that may be incurred in the working of the railway during a succeeding period of five years. Should it be found that a loss would have been incurred, then so much of the said proceeds as exceeds that loss, shall be applied to the purpose afore-

mentioned: Provided that any surplus that may have accrued at the end of the sixth period of five years shall be retained by the Administration.

- (e) At the end of each month in each financial year, interest shall be calculated at the rate of five per cent. (5%) per annum on the amount by which the aggregate amount of the accumulated loss and the accrued interest up to the end of the preceding month, exceeds the aggregate amount of the profits, if any, up to the end of that month, and the amount of such interest shall be reflected on a separate statement, a copy of which shall be furnished to the Corporation as soon as practicable after the close of each financial year.
- (f) If the results of working the railway during any period of five years show a loss, the amount of such loss, together with the interest accrued during such period of five years, as reflected in the statements mentioned in paragraph (e), shall be paid by the Corporation to the Administration within thirty (30) days after the date on which a statement, certified by the Administration's Chief Accountant, indicating the amount for which the Corporation is liable, shall have been furnished to the Corporation at its office at Phalaborwa. After settlement has been effected between the parties at the end of the sixth period of five years, the Corporation shall be under no obligation to reimburse the Administration for losses that may thereafter be incurred in the working of the railway.

8. The depreciation charges referred to in sub-clause (1) of clause 7 shall be assessed at the normal rates applicable to the Administration's assets, and the interest charges referred to in sub-clause (2) of clause 4 and sub-clause (1) of clause 7 shall be assessed at the average rate determined by the Administration in accordance with its usual procedure and shall not be specifically loaded against the railway.

9. The Corporation agrees that, if at a future date within fifty years of the date of opening the railway for public traffic, the traffic falls off to such an extent that the total volume of traffic carried over the railway is, in the opinion of the Administration after consultation with the Corporation, insufficient to justify the operation of the railway, the Administration shall have the right to uplift the whole or any portion of the railway and, if so uplifted, to recover from the Corporation an amount equal to the total of the original cost of construction and any amount subsequently expended on the railway (including expenditure financed from the Administration's Renewals Fund or Betterment Fund) less the total of

- (a) the depreciation charges raised in respect of the railway from the date of its opening to such aforementioned future date; and
- (b) the total residual value, determined in accordance with the Administration's usual accounting practice, of any assets or items of material or equipment which the Administration may decide to retain. The assets, material and equipment not so retained by the Administration shall become the property of the Corporation subject to any conditions of title under which the assets are held by the Administration.

10. If the whole or any portion of the railway is uplifted by the Administration in terms of clause 9, the cost incurred shall be borne by the Corporation.

11. The Administration undertakes that during such time as the Corporation remains bound to pay the special surcharge provided for in sub-clause (1) of clause 6, it will make provision in the Official Railway Tariff Book for the payment of a like surcharge on all base mineral traffic, as defined in sub-clause (3) of clause 6, consigned by any other senders over the railway or any portion thereof in the direction of Hoedspruit and that all moneys derived from such surcharge will be dealt with as provided in clause 7 of this Agreement.

12. There shall be no restriction on the running powers of the Administration in respect of any class of traffic whatever over the railway and the Administration may construct any line or lines of railway, and consent to the construction of private sidings, in continuation 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 any representations that the Corporation may make with respect thereto.

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 5th day of June, 1961.

AS WITNESSES:

1. (Sgd.) J. G. C. WESTRAAD.  
2. (Sgd.) J. H. F. GROBLER.

(Sgd.) B. J. SCHOEMAN.  
Minister of Transport.

SIGNED for and on behalf of the PHOSPHATE DEVELOPMENT CORPORATION (PROPRIETARY) LIMITED, at Johannesburg on this the 29th day of May, 1961, under the authority of a resolution of the Board of Directors of the Corporation dated the 24th day of March, 1961.

AS WITNESSES:

1. (Sgd.) M. WYKERD.  
2. (Sgd.) S. F. MALAN.

(Sgd.) D. J. R. VAN WIJK.  
Acting Chairman.