

No. 58, 1963.]

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 Delmas and a terminal point on the farm Middelburg, No. 39, in the district of Delmas in the Province of the Transvaal, and for matters incidental thereto.

(English text signed by the State President.)
(Assented to 17th June, 1963.)

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 Delmas and a terminal point on the farm Middelburg, No. 39, in the district of Delmas.

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 sixteen miles between Delmas and a terminal point on the farm Middelburg, No. 39, in the district of Delmas in the Province of the Transvaal, at a gross cost not exceeding three million one hundred and forty-two thousand 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 things that may be necessary for the purpose of the line.

Ratification of certain agreement relating to line of railway from Delmas to a terminal point on the farm Middelburg, No. 39.

4. The agreement concluded on the twenty-seventh day of May, 1963, between the Government of the Republic in its Railways and Harbours Administration (hereinafter called "the Administration"), and the Afrikander Proprietary Mines Limited and the General Mining and Finance Corporation Limited, a copy 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 Second Railway Construction Act, 1963.

Schedule.

MEMORANDUM OF AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA IN ITS RAILWAYS AND HARBOURS ADMINISTRATION, OF THE ONE PART, AND THE AFRIKANDER PROPRIETARY MINES LIMITED, AND THE GENERAL MINING AND FINANCE 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 AFRIKANDER PROPRIETARY MINES LIMITED, and the GENERAL MINING AND FINANCE CORPORATION LIMITED, both being companies incorporated with limited liability under the Companies Act, 1926 (hereinafter referred to as "the Guarantors"), of the other part.

WHEREAS the Guarantors have petitioned the Administration to construct, equip, maintain and work an electrified line of railway of a gauge of three feet six inches from Delmas to a terminal point on the farm Middelburg, No. 39, in the Magisterial District of Delmas, Province of the Transvaal, a distance of approximately sixteen miles (hereinafter termed "the railway") for the purpose of conveying traffic to and from an area in which the Guarantors are carrying on, or are 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) The Administration shall have the right, after consultation with the Guarantors, 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. To the extent to which the Administration decides that such additional tracks or other facilities are required to cope with any increase in the Guarantors' traffic, the cost thereof 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 three million one hundred and forty-two thousand rand (R3,142,000) 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 Guarantors, 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 ninety-six 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 any amount/s repaid by the Guarantors to the Administration in terms of clause 8 hereof, and excluding also 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) 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) 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 state-

ment shall be supplied in duplicate to the Guarantors at the office of the General Mining and Finance Corporation Limited, in Johannesburg, 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 and shall indicate the rates of depreciation and interest charges applied on the capital cost of construction and equipment.

(2) (a) If the working results of the railway in any one year, calculated as provided for in sub-clause (1) of this clause, show a surplus, such surplus shall be retained by the Administration.

(b) If the working results of the railway in any one year show a loss, the amount of such loss shall be paid by the Guarantors 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 Guarantors are liable, shall have been furnished to the Guarantors at the office of the General Mining and Finance Corporation Limited, in Johannesburg. After settlement has been effected between the parties in respect of the final year of the said period of thirty years, the Guarantors shall be under no obligation to reimburse the Administration for losses that may thereafter be incurred in the working of the railway.

7. The depreciation charges referred to in sub-clause (1) of clause 6 shall be assessed at the normal rates applicable to the Administration's assets.

8. (1) The Guarantors hereby agree to repay to the Administration on demand, or within such period as the Administration may in its discretion determine after consultation with the Guarantors, but subject to the final proviso to sub-clause (3) hereof, the total amount of—

(a) any compensation which the Administration may have paid to any third party or parties whose rights to minerals of whatever nature have been 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 any such third party:

Provided that nothing in this sub-clause contained shall be deemed to impose on the Guarantors 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 this Agreement.

(2) In the absence of such an agreement as is contemplated in sub-clause (3) hereof, the Administration shall forthwith take all reasonable and proper steps to settle, on the most advantageous terms, any claims for compensation preferred against it by third parties as aforesaid, and shall consult the Guarantors before arriving at a final settlement with any such claimant: Provided that if any such claim cannot be settled out of court on terms which in the opinion of the Guarantors are fair and reasonable, the Administration shall, at the risk and expense of the Guarantors, contest any legal proceedings which the claimant may bring against it for the determination of the amount of the compensation payable.

(3) With the consent of the Guarantors, the Administration may enter into an agreement with any such claimant whereby the payment of compensation to the claimant in respect of the injurious affection of his rights to minerals is postponed to some future date so as to permit of the amount of the compensation to which the claimant is entitled, being determined more readily and accurately. When the said date arrives, the Administration shall, with due regard to the terms of such agreement and in consultation with the Guarantors, proceed to negotiate for the settlement of any such claim on the most advantageous terms, subject however to the proviso to sub-clause (2) of this clause, which shall be deemed also to form part of this sub-clause, and provided further that the Guarantors shall not be liable to repay to the Administration any amount which the Administration may pay to any such claimant whose claim for compensation is presented to the Administration for payment pursuant to any such agreement as aforesaid, after the lapse of a period of fifty years from the date of the opening of the railway for public traffic.

(4) It is hereby agreed that if, as a result of the construction of the railway, any rights to minerals of whatever nature vested in the Guarantors or either of them (whether such rights were acquired before or after the date of this Agreement) are injuriously affected 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 Guarantors shall and hereby do unconditionally release the Administration from any and all liability to compensate them or either of them, their successors or assigns, in respect of the injurious affection, as aforesaid, of such rights to minerals.

9. The Guarantors agree that, if at a future date after thirty years but 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 Guarantors, insufficient to justify the operation of the railway, the Administration shall, unless the Guarantors are prepared to enter into a fresh agreement with the Administration guaranteeing to meet any future losses incurred in working the railway, have the right to uplift the whole or any portion of the railway and, if so uplifted, to recover from the Guarantors an amount equal to the total of the original cost of construction plus any amount subsequently expended on the railway (including expenditure financed from the Administration's Renewals Fund or Betterment Fund) which, in terms of sub-clause (2) of clause 2 hereof, is deemed to form part of the cost of construction and equipment of the railway, less the total of

(a) the depreciation charges raised in respect of the cost of construction and equipment of the railway (including any amount

deemed in terms of clause 2 (2), to form part of such cost), from the date of the opening of the railway to such aforementioned future date; and

- (b) the total residual value, determined in accordance with the Administration's usual accounting practice, of such assets or items of material or equipment (included or deemed to be included in the cost of construction and equipment of the railway for the purposes of this Agreement), as the Administration may decide to retain. Any of the aforementioned assets, material and equipment not so retained by the Administration shall become the property of the Guarantors, 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 Guarantors: Provided that, to the extent to which the cost of uplifting the railway or any such portion thereof is increased by reason of the existence of any works or other assets the cost of which was not deemed, in terms of clause 2 (2), to have formed part of the cost of construction and equipment of the railway for the purposes of this Agreement, such increased cost of uplifting shall not be recoverable from the Guarantors.

11. 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 Guarantors and shall take into consideration any representations that the Guarantors may make with respect thereto.

12. The obligations and liabilities of the Guarantors under this Agreement shall be joint and several, the one paying the other to be absolved.

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 27th day of May, 1963.

As Witnesses:

1. (Sgd.) L. M. ENGELBRECHT.
2. (Sgd.) J. H. VILJOEN. (Sgd.) B. J. SCHOEMAN,
Minister of Transport.

SIGNED for and on behalf of the GENERAL MINING AND FINANCE CORPORATION LIMITED, at Johannesburg on this the 24th day of May, 1963, under the authority of a resolution of the Board of Directors of the Company dated the 24th day of May, 1963.

As Witnesses:

1. (Sgd.) C. T. TILBURN.
2. (Sgd.) J. W. BURLAND. (Sgd.) C. S. McLEAN,
Chairman.

SIGNED for and on behalf of the AFRIKANDER PROPRIETARY MINES LIMITED, at Johannesburg on this the 22nd day of May, 1963, under the authority of a resolution of the Board of Directors of the Company dated the 22nd day of May, 1963.

As Witnesses:

1. (Sgd.) C. W. ROPER.
2. (Sgd.) J. R. DE BRUYN. (Sgd.) G. V. RICHDALE,
Chairman.