

THE UNITED REPUBLIC OF TANZANIA



No. 4 OF 1973

I ASSENT,

Tulius K. Nyerere
President

8TH MARCH, 1973

An Act to amend the Tanzania-Zambia Railway Authority Agreement (Implementation) Act

[9TH MARCH, 1973]

ENACTED by the Parliament of the United Republic of Tanzania.

1. This Act may be cited as the Tanzania-Zambia Railway Authority Agreement (Implementation) (Amendment) Act, 1973, and shall be read as one with the Tanzania-Zambia Railway Authority Agreement (Implementation) Act, 1968 (hereinafter referred to as the principal Act).

Short title and construction Acts, 1968 No. 61

2. The preamble to the principal Act is amended by the deletion of the words "AND WHEREAS the said Agreement was reduced to writing and was executed by the parties thereto on the 3rd October, 1968:" and the substitution therefor of the words "AND WHEREAS an Agreement was executed by the parties thereto on the third day of October, 1968, which said Agreement was replaced by an Agreement executed by the parties thereto on the seventeenth day of December, 1972:".

Amendment of preamble

3. Section 2 of the principal Act is repealed and the following section is substituted therefor:—

Repeal and replacement of section 2

"Interpretation

2. In this Act, unless the context otherwise requires—

"Agreement" means the Agreement between the Government of the United Republic of Tanzania and the Government of the Republic of Zambia executed by the parties thereto on the seventeenth day of December, 1972, which Agreement is set out in the Schedule to this Act;

"Authority" means the Tanzania-Zambia Railway Authority established and deemed to have been established by section 2A;

"Council" means the Tanzania-Zambia Railway Council of Ministers referred to in the Agreement;

“loan obligations to the People’s Republic of China” means the loan obligations of the Government of the United Republic of Tanzania and the Government of the Republic of Zambia to the People’s Republic of China incurred or to be incurred for the purposes of the Tanzania-Zambia Railway pursuant to the Agreement between the Government of the United Republic of Tanzania and the Government of the Republic of Zambia and the Government of the People’s Republic of China signed in Peking on the fifth day of September, 1967.”

Section 2A
added

3A. The principal Act is amended by adding immediately below section 2, the following new section:—

“Establishment of Authority

2A. There is hereby established the Tanzania-Zambia Railway Authority and it shall be deemed to have been established as from the third day of October, 1968, pursuant to an agreement made between the Government of the United Republic of Tanzania and the Government of the Republic of Zambia on that date.”

Insertion of
new sections
4, 5 and 6

4. The principal Act is amended by adding the following new sections immediately below section 3:—

“Vesting of movable assets in the Authority

4.—(1) All movable property in respect of which loan obligations to the Government of the People’s Republic of China have been incurred is, to the extent that the Government of the United Republic of Tanzania has title to such property, hereby vested in the Authority.

(2) All movable property in respect of which loan obligations to the Government of the People’s Republic of China may hereafter be incurred shall, to the extent that the Government of the United Republic of Tanzania has title to such property, vest in the Authority on the date when such loan obligations arise.

Vesting of Immovable assets in the Authority

5.—(1) The Authority shall, without further grant or assurances, have power in the United Republic of Tanzania to enter upon, take possession of, hold, retain and use any building (including the curtilage thereof) and any land on or over which civil engineering works have been constructed where in respect of such building or civil engineering works, as the case may be, loan obligations to the People’s Republic of China have been incurred.

(2) The area of land on or over which the Authority may exercise the rights conferred upon it by subsection (1) of this section shall be delineated on a map or maps prepared for that purpose by the Government of the United Republic of Tanzania after consultation with the Authority and a map or maps so prepared shall, in any proceedings in any court arising out of the exercise or purported exercise of such rights, be conclusive evidence of the physical extent thereof.

Liability
of Authority

6.—(1) The Authority shall be liable to repay to the Government of the United Republic of Tanzania and the Government of the Republic of Zambia a sum equivalent in the aggregate to—

- (a) the amount of the loan obligations of the United Republic of Tanzania and the Republic of Zambia to the People's Republic of China; and
- (b) the amount contributed, from time to time, by the United Republic of Tanzania and the Republic of Zambia to the funds and resources of the Authority.

(2) The sum referred to in subsection (1) shall be paid by the Authority in such instalments, together with such interest thereon, as the Council may, from time to time, prescribe:

Provided that—

- (i) in respect of each instalment or payment of interest so prescribed the Government of the United Republic of Tanzania shall be entitled to one-half and the Government of Zambia to the other half;
- (ii) each such instalment together with payment of interest (if any) shall be in an amount sufficient to enable the Government of the United Republic of Tanzania and the Government of the Republic of Zambia to discharge their loan obligations to the People's Republic of China as they arise."

5. The Schedule to the principal Act is deleted and the following Schedule is substituted therefor:

Repeal and
deletion
of the
Schedule

"SCHEDULE

AGREEMENT made this seventeenth day of December, 1972 BETWEEN the UNITED REPUBLIC OF TANZANIA and the REPUBLIC OF ZAMBIA (hereinafter together called "the Contracting Governments").

WHEREAS the Contracting Governments have for the purpose of co-ordinating the implementation of the Tanzania-Zambia Railway Project established—

(i) An Inter-Governmental Ministerial Committee.

(ii) By an Agreement dated 3rd October, 1968, the Tanzania-Zambia Railway Authority (hereinafter called "the Authority") which has in their respective countries the capacity and status of a body corporate:

AND WHEREAS the Contracting Governments intend that the Tanzania-Zambia Railway Project should continue as a single undertaking under their joint ownership and control:

AND WHEREAS it is now expedient to make further provision relating the Ministerial Committee and the Authority and for the ownership, management, control and operation of the Tanzania-Zambia Railway jointly as aforesaid:

NOW THEREFORE the contracting Governments have agreed as follows:—

ARTICLE I

- (i) The Ministerial Committee shall henceforth be called the Tanzania-Zambia Railway Council of Ministers (hereinafter referred to as "the Council"). The Council shall consist of six Ministers, three of whom shall be appointed by the Government of the United Republic of Tanzania and three of whom shall be appointed by the Government of the Republic of Zambia.
- (ii) In the event that any matter under consideration by a meeting of the Council results in a disagreement between the Ministers appointed by the Government of the United Republic of Tanzania and the Ministers appointed by the Government of the Republic of Zambia, such matter shall, unless by agreement it is to be considered at a subsequent meeting or meetings of the Council, be referred to the President of the United Republic of Tanzania and President of the Republic of Zambia for their decision.

ARTICLE II

The Council shall—

- (a) be responsible to the President of the United Republic of Tanzania and the President of the Republic of Zambia for all matters relating to the construction and operation of the Tanzania-Zambia Railway;
- (b) consider and determine all matters of policy relating thereto;
- (c) give such directions to the Board of Directors of the Authority as may be necessary to discharge the responsibilities of the Council and to implement its decisions.

ARTICLE III

- (i) There shall be a Board of Directors for the Authority which, subject to the overall control of the Council, shall be responsible for the policy, control and management of the Authority.
- (ii) The Board of Directors shall consist of not less than three members but not more than five members or their alternates appointed by the Government of the United Republic of Tanzania and not less than three members but not more than five members or their alternates appointed by the Government of the Republic of Zambia:
Provided that the number of Directors representing each Contracting Government may be increased from three up to five by a resolution of the Council.
- (iii) A General Manager and Deputy General Manager shall be nominated respectively by the Government of the Republic of Zambia and the Government of the United Republic of Tanzania. The General Manager and the Deputy General Manager shall attend meetings of the Board but they shall have no vote.
- (iv) The Board shall determine its own procedure, provided, however, that decisions of the Board shall be by majority vote and shall include an affirmative vote of at least one member representing each of the Contracting Governments.

ARTICLE IV

The functions of the Authority shall be—

- (a) to own and operate on behalf of the two Governments the Tanzania-Zambia Railway;
- (b) to act as agent of the two Governments in all matters relating to the design and construction of the Railway and to the acquisition of rolling stock, locomotives, train equipment, spare parts and accessories;
- (c) to recruit, employ and provide for the training of staff for the management and operation of the Railway on an equal basis unless otherwise authorized by the Board of Directors;
- (d) to consult and co-operate with the East African Railways Corporation, the East African Harbours Corporation and the Zambia Railways Board;
- (e) to give effect to such directions as may, from time to time, be given to the Board of Directors of the Authority by the Council;
- (f) to carry out such operations as in the opinion of the Authority are incidental, ancillary or conducive to the provision of railway transport.

ARTICLE V

- (i) The financial year of the Authority shall commence on the first day of July of each calendar year and end on the thirtieth day of June of the next following calendar year;
- (ii) The Board shall ensure that proper accounts and other records in relation thereto are kept by the Authority and shall prepare in respect of each financial year of the Authority a statement of accounts.
- (iii) The accounts of the Authority shall be audited by such independent auditors as the Board may appoint.
- (iv) As soon as the accounts of the Authority have been prepared and audited, which should not be later than three months after the end of each financial year, the Board shall submit a copy of the statement of accounts and a report on the activities of the Authority for the same year to the Council.
- (v) The Board shall, prior to the commencement of each financial year, prepare and submit for the approval of the Council, estimates of revenue and expenditure of the Authority for such financial year.

ARTICLE VI

- (i) The Head Office of the Authority shall be in Dar es Salaam.
- (ii) The Board shall establish a Branch Office in Lusaka and in such other places as it may deem necessary.

ARTICLE VII

The Contracting Governments undertake—

- (a) to vest in the Authority in such manner as may be appropriate, title to the assets in respect of which the Contracting Governments have incurred liabilities to the Government of the People's Republic of China or which they may hereafter acquire for the purpose of the Railway;
- (b) until such time as the Railway shall have become operational to contribute in equal parts to the funds and resources of the Authority;
- (c) to confer on the Authority in their respective countries such rights in or over land as may be necessary to enable the Authority to operate the Railway and to protect its assets;
- (d) to enact in their respective countries legislation in terms to be agreed between them providing for and regulating the manner in which the Railway shall be operated;
- (e) for a period of five years from the date on which the Railway becomes operational—
 - (1) to exempt the Authority from the payment in their respective countries of taxes on capital or income;
 - (2) to exempt the Authority from the payment in their respective countries of customs and excise duties on goods imported or purchased by the Authority for its own use.

ARTICLE VIII

- (i) The Government of the United Republic of Tanzania shall become entitled to one-half and the Government of the Republic of Zambia shall become entitled to the other half of each and every payment of interest and repayment of capital due from the Authority in respect of a sum equivalent to the aggregate of the value of assets vested in the Authority pursuant to sub-paragraph (a) of Article VII and the amounts contributed by the Contracting Governments to the funds and resources of the Authority.
- (ii) The sum aforesaid shall be paid by the Authority to the Contracting Governments in such instalments as the Council shall prescribe provided always that such instalments shall be in an amount sufficient to enable the Contracting Governments to discharge their obligations to the People's Republic of China in respect of the Railway Loan.
- (iii) For the purpose of this Article, the value of the assets vested in the Authority pursuant to sub-paragraph (a) of Article VII shall be deemed to be a sum equivalent to their cost to the Contracting Governments.

ARTICLE IX

The ownership of the Authority and the financial responsibility for it will lie with the Contracting Governments in equal shares.

ARTICLE X

In the event of the Council agreeing that the Authority should be provided with additional capital from the Contracting Governments or that guarantees should be given by these Government in respect of loans or credits to be obtained by the Authority from other sources, such additional capital or guarantees shall be provided or given by the Contracting Governments in equal amounts.

ARTICLE XI

The Contracting Governments undertake to make maximum use of the facilities provided by the Railway.

ARTICLE XII

The rate structure for the carriage of goods and passengers shall be such that taking one year with another, the revenues of the Authority will be sufficient to cover operating expenses, financial commitments and the replacement of assets.

ARTICLE XIII

In case of dissolution of the Authority, the Contracting Governments shall agree on the division of assets and liabilities, which shall be on the basis of the market value of such assets.

ARTICLE XIV

In the event of disagreement by the Contracting Governments with respect to the interpretation of the provisions of this Agreement or the provisions of any legislation enacted under Article VII (d) hereof, such disagreement shall be referred to an Arbitrator or Board of Arbitrators appointed by the Contracting Governments. The decision of the Arbitrator or Board of Arbitrators shall be binding on the parties and the rules of such arbitration shall be determined by the Contracting Governments.

ARTICLE XV

This Agreement shall come into force on a day to be appointed by agreement between the Contracting Governments and on that day shall take effect in substitution for the Agreement between the Contracting Governments dated 3rd October, 1968.

Thus done and signed for and on behalf of the Government of the United Republic of Tanzania at Lusaka this seventeenth day of December, 1972.

J. M. LUSINDE,

Minister for Communications and Works

Thus done and signed for and on behalf of the Government of the Republic of Zambia at Lusaka this seventeenth day of December, 1972.

F. MULEKIRA,

Passed in the National Assembly on the twenty-third day of February, 1973.


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Clerk of the National Assembly