

BECHUANALAND PROTECTORATE.

No. 37 of 1935.

(Promulgated 5th July, 1935.)

PROCLAMATION

By His EXCELLENCY THE HIGH COMMISSIONER

Making further provision in the Bechuanaland Protectorate for the appointment of a Railway Commission and for the regulation of railway charges.

Whereas it is desirable to make further provision in the Bechuanaland Protectorate for the appointment of a Railway Commission and for the regulation of railway charges;

Now therefore under and by virtue of the powers in me vested I do hereby declare, proclaim and make known as follows:—

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1. This Proclamation may be cited for all purposes as the "Railway Proclamation, 1935," and shall not come into operation unless and until the High Commissioner has declared by Notice in the *Gazette* that it is His Majesty's pleasure not to disallow the same, and shall come into operation on such date as may be fixed by the High Commissioner by the same or any subsequent Notice in the *Gazette*.

2. In this Proclamation, unless inconsistent with the context:—

- "the Companies" means The Rhodesia Railways, Limited, and The Mashonaland Railway Company, Limited, and shall include the successors in title of the Companies or of any of them;
- "fares" means fares and other charges in connection with the conveyance of passengers and their luggage;
- "the Governments" means the Governments of Southern Rhodesia, Northern Rhodesia and the Bechuanaland Protectorate;
- "loan service" means the amount actually required during any year of account to remunerate any of the loan capital shown in the Schedule to this Proclamation as existing at 30th September, 1934, or any capital raised or provided after the 30th September, 1934, in terms of section sixteen (b) and (c);
- "merchandise" includes goods, minerals, live stock and animals of all descriptions;
- "modifications" in relation to charges includes modifications, whether by way of decrease or increase, and "modify" shall be construed accordingly;
- "net revenue" means the revenue after deducting all expenses, charges and allowances chargeable against revenue, except the items mentioned in section twenty-three;
- "the railways" means the portions of the undertakings used for railway purposes;
- "railway charges" includes rates, fares, tolls, dues, and other charges which the Companies or either of them are entitled to make for railway services;
- "rates" means rates and other charges in connection with the carriage of merchandise;
- "realised income" means in respect of any year of account the net revenue realised by the Companies in that year;
- "revenue" means the gross revenue of the undertakings;
- "standard revenue" means in respect of any year of account such net revenue as will provide the items specified in section fifteen;
- "trader" includes any person sending, receiving or desiring to send merchandise by railway;
- "the undertakings" means the undertakings, railways, lands, works, movable and immovable property, powers, authorities, privileges, exemptions, rights of action and suit, and all other the contractual and other rights and interests to which the Companies are from time to time entitled;
- "year," when used with reference to the receipts, expenses, charges accounts or statistics of the Companies or either of them, means the year of account;
- "year of account" means the twelve months for which the accounts of the Companies are made up pursuant to the provisions of this Proclamation.

3. (1) There shall be established a Tribunal styled the Railway Commission (in this Proclamation referred to as "the Commission") consisting of four members, and the Commission shall be a court of record and have an official seal which shall be judicially noticed, and the Commission may, subject to the provisions of sub-section (6) of this section, act notwithstanding any vacancy in the number of its members.

(2) The following provisions shall apply to the members of the Commission other than the Chairman:—

(a) They shall be appointed, one by the Government of Southern Rhodesia, one by the Government of Northern Rhodesia, one by the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland on behalf of the Government of the Bechuanaland Protectorate.

(b) Each appointment shall be for a period of three years, and shall be made by the Government which appointed the retiring member. A retiring member shall be eligible for reappointment.

The appointment of a member shall terminate if his estate is sequestrated as insolvent or is assigned by him for the benefit of his creditors, or if through infirmity of mind or body he becomes incapable of performing the duties of a member, or if his appointment is withdrawn by the Government which appointed him in terms of the next succeeding paragraph.

(c) Any of the Governments may withdraw the appointment of the member appointed by it on the ground of proved misbehaviour or incapacity. In the case of the Government of the Bechuanaland Protectorate such withdrawal shall be subject to the approval of the Secretary of State.

(d) The remuneration of each member shall be fixed by agreement of the Governments.

(e) In the event of a casual vacancy, caused by the retirement, termination of appointment or death of any member, the Government which appointed such member shall appoint a member in his place for the remainder of the period of the original appointment.

(f) In the event of any member being unable to act owing to absence, illness or any other cause, the Government by which such member was appointed may appoint another person in his place during the period of such member's inability to act.

(3) The Chairman (who shall be a man of practical experience of railway working) shall be appointed (with the approval of the Secretary of State) by the Governments jointly, after consultation with the Companies, for a period not exceeding five years, upon terms to be fixed by the Governments. If the Governments fail to make such appointment within four months of the date when such appointment falls to be made, the appointment may be made by the Secretary of State.

(4) In the event of the office of Chairman, by reason of death or retirement, becoming vacant, or if the Chairman is unable to act owing to absence, illness or any other cause, an acting Chairman may be appointed for a period not exceeding six months. The provisions of sub-section (3) of this section as to the qualifications and appointment of a Chairman shall apply to an acting Chairman.

(5) The Commission shall appoint from its members a Deputy Chairman, who, in default of the appointment of an acting Chairman in terms of sub-section (4) of this section, shall act as Chairman whenever, owing to absence, illness or any other cause, the Chairman is unable to act. The provisions of sub-section (3) of this section as to the qualifications and appointment of a Chairman shall not apply to a Deputy Chairman.

(6) The Chairman, Acting Chairman or Deputy Chairman (as the case may be), and two other members of the Commission, shall constitute a quorum.

4. The Commission may appoint a Secretary and such other officers and servants (subject to the consent of the Governments as to number) as it may consider necessary for assisting it in the proper execution of its duties, and there shall be paid to any such Secretary, officer or servant such remuneration (including superannuation allowances or gratuities on retirement) as the Commission, with the approval of the Governments, may determine.

5. The Chairman and members of the Commission appointed in terms of section *two* of the Railway Proclamation, 1927, and the Secretary and other officers and servants of the Commission appointed in terms of section *three* of that Proclamation shall be deemed to have been appointed under the provisions of this Proclamation as from the respective dates of their appointments.

6. The remuneration of the Chairman and other members of the Commission, of the Secretary, officers and servants thereof, and any other expenses of the Commission incurred in the exercise and performance of its powers and duties, shall be defrayed (so far as the same are not met out of the amount recovered by way of fees) by the Companies as part of their working expenses.

The Commission may from time to time frame an estimate of its expenditure and make levies on the Companies for the funds to meet the same. The Governments may make temporary advances to meet the expenses of the Commission, pending the recovery of such expenses from the Companies.

7. (1) The Commission may from time to time, with the approval of a Judge of the High Court of Southern Rhodesia, a Judge of the High Court of Northern Rhodesia and the President of the Special Court of the Bechuanaland Protectorate, make general rules governing its procedure and practice, and generally for carrying into effect its powers and duties under this Proclamation, and such rules may, amongst other things, provide for—

- (a) the recovery of any sums payable by the Companies, or either of them, pursuant to this Proclamation or any order made by the Commission under this Proclamation;
- (b) the awarding of costs by the Commission, but so that in proceedings before the Commission the Commission shall not have power to award costs unless it is of opinion that either the application, claim or complaint, or the defence or objection, as the case may be, is frivolous or vexatious;
- (c) the reference of any question to a member or officer of the Commission or any other person appointed by it for report after holding a local enquiry;
- (d) enabling the Commission to dispose of any proceedings before it, notwithstanding that in the course of the proceedings there has been a change in the persons sitting as members of the Commission;
- (e) the right of audience before the Commission, provided that any party shall be entitled to be heard in person, or by a representative in the employment of the party duly authorised in writing, or by counsel or solicitor;

and may prescribe a scale of fees for and in connection with the proceedings before the Commission.

(2) Each of the Governments shall be entitled to intervene and be heard in any proceedings before the Commission or in any reference or special case. The Companies or either of them shall *prima facie* be regarded as a party to such proceedings.

(3) The Commission shall annually make a report of its proceedings under this Proclamation to each of the Governments.

(4) The Commission shall furnish annually to each of the Governments an account showing its revenue and expenditure; such account to be subject to audit by the Governments.

8. Subject to the provisions of this Proclamation and to the rules made thereunder, the Commission may hold sittings in such place or places as may be convenient for the determination of the proceedings before it. The head office of the Commission shall be at Bulawayo.

9. The decisions of the Commission shall be by a majority, and for this purpose every member of the Commission, including the Chairman, shall have one vote, and in case of equality the Chairman shall have a second or casting vote. Any one of the Governments, or either or both of the Companies, who may be dissatisfied with a decision of the Commission shall be entitled to require any matter involved in such decision to be referred for final decision to a referee, to be appointed by the Secretary of State, whose award shall take effect as though it were a judgment of the Commission. The costs of any such reference shall be deemed to be expenses of the Commission.

10. Should a question of jurisdiction as to the competence of the Commission to entertain any particular matter or a question as to the *locus standi* of any applicant arise, such question shall be referred by way of special case to the High Court of Southern Rhodesia, whose decision shall be final. In the proceedings on such special case the Commission shall take proper steps for legal representation of the Commission, and shall be recouped its costs thereof as part of the expenses of the Commission.

The Registrar of the Court shall transmit a certified copy of any judgment or order of the Court in such special case to the Registrars of the High Court of Northern Rhodesia and of the Special Court of the Bechuanaland Protectorate respectively. Upon the filing of such copy in the Special Court of the Bechuanaland Protectorate it shall have the effect of a judgment or order of that Court.

11. (1) The Companies shall prepare and submit to the Commission financial accounts, which shall be compiled in a form and manner to be approved by the Commission, and shall be made up to the 30th September of each year.

Six copies of such financial accounts and of such supplementary statements as the Commission may require shall be delivered to the Commission on such date as the Commission may fix, commencing with the year of account ending the 30th September, 1935; and the Companies shall on request furnish the Commission with such explanations or further information as the Commission may require with reference to the said accounts and statements or to any documents submitted to the Commission pursuant to the provisions of this Proclamation.

(2) The Commission shall have the right to inspect all books, accounts, records and statistics of the Companies, or either of them, at all reasonable times and after reasonable notice, and if the Commission deems it desirable to have such accounts, records and statistics for any year or other period examined by a chartered, statutory or incorporated accountant, or other properly qualified person appointed by the Commission for this purpose, each of the Companies shall give all necessary facilities and assistance for such inspection and examination.

(3) The Commission may, for the purpose of obtaining information as to any matter being enquired into by it, summon any person before it to give evidence or produce any books, papers or documents in his custody or control in relation to such matter, and, if such person shall fail or neglect to appear in answer to such summons or to give

evidence or produce such books, papers or documents, the Commission may impose on him the same penalties as might be inflicted by the High Court of Southern Rhodesia in like circumstances, and such penalties shall be enforced in like manner as penalties imposed by such Court.

The Commission may further, for the purpose aforesaid, require the Companies, or either of them, to furnish, upon reasonable notice, served upon their local representative, such books, papers or documents, wherever situated, and should either Company fail or neglect to comply with such notice, it shall be liable to a penalty not exceeding £100, and to incur a further penalty of £10 in respect of each day during which such default shall continue.

12. (1) There shall be a reserve account, and such account shall be built up and maintained as hereinafter provided.

(2) For the purposes of this Proclamation the amount at any time standing to the credit of the reserve account shall be the sum of any amounts standing to the credit of the reserve account of each of the Companies added together, or any amount standing to the credit of the reserve account of either of the Companies, less any balance to the debit of the net revenue account of the other.

If any amount standing to the debit of the net revenue account of either of the Companies exceeds any amount standing to the credit of the reserve account of the other, or if there be any amount standing to the debit of the net revenue account of each of the Companies, then the amount of such excess or the sum of such amounts added together, as the case may be, shall be an amount standing to the debit of net revenue account of the undertakings.

(3) The amount standing to the credit of the reserve account of the undertakings as ascertained in accordance with the provisions of sub-section (2) of this section was at the 30th September, 1933, the sum of £401,438. 0s. 7d., and that sum, subject to any additions or deductions which may have occurred between the 30th September aforesaid and the date of the coming into operation of this Proclamation, shall be deemed to be the amount standing to the credit of the reserve account herein constituted at the said date of the coming into operation of this Proclamation.

(4) The Companies shall invest in trustee securities as defined by the laws in force from time to time in Great Britain for the investment of trust moneys (a) whenever the amount standing to the credit of the reserve account does not exceed the loan provision, the whole of such amount, and (b) whenever such amount exceeds the loan provision, a sum not less than two-thirds of such amount or not less than the loan provision, whichever shall be the greater. The sums so invested shall not be used for any purpose other than that of meeting any deficiency in the loan service.

Any other sums which from time to time shall be held by the Companies, or either of them, representing the amounts carried to the reserve account, shall not without the prior approval of the Commission be applied by the Companies respectively to any purpose other than that of meeting any deficiency as aforesaid.

13. If and whenever the amount standing to the credit of the reserve account is less than twice the loan provision, there shall be no reduction in the schedule of railway charges for the time being in force, calculated and intended to reduce the total realised income.

14. In addition to the reserve account, there shall be a rates stabilization account, the maximum of which shall be the sum of £500,000, which shall be built up and maintained and be available as hereinafter prescribed: Provided that in any year of account no amount shall be withdrawn from that account and brought into the revenue of the year unless the estimates for the year submitted pursuant to the provisions of section *twenty* have anticipated a withdrawal from that account and

bringing into revenue as aforesaid; and provided further that the amount so withdrawn and brought into revenue in any year shall be limited to the amount estimated to be so withdrawn, or to the amount actually required to make the net revenue equivalent to the standard revenue for the year, whichever shall be the less.

15. The standard revenue shall be such as will provide the following items:—

- (a) A sum to be calculated in accordance with section *sixteen* (in this Proclamation called “the loan provision”).
- (b) A sum to be calculated in accordance with section *seventeen* (in this Proclamation called “the dividend provision”).
- (c) Sums to be calculated in accordance with paragraphs (a), (b) and (c) of section *eighteen* (in this Proclamation called respectively “the reserve provision,” “the additional reserve provision” and “the special reserve provision”).
- (d) Sums to be calculated in accordance with paragraphs (a) and (b) of section *nineteen* (in this Proclamation called respectively “the rates stabilization provision” and “the special rates stabilization provision”).

16. The loan provision shall consist of—

- (a) the amount actually required during the year for meeting the interest upon the loan capital of the Companies, as at the 30th September, 1934, particulars whereof are set out in the schedule to this Proclamation;
- (b) the amount actually required during the year for meeting the charges for interest and sinking fund (if any) upon any loan capital which may be raised or provided after the 30th September, 1934, with the prior approval of the Commission; and
- (c) the amount actually required during the year for meeting the fixed interest or fixed dividend on any capital raised or provided by the issue hereafter, with the prior approval of the Commission, of any fixed interest bearing stock or any preference shares.

Before giving approval of the raising or the providing of any new capital as contemplated in paragraphs (b) and (c) of this section, and the terms and conditions thereof, whether with or without a provision for a sinking fund, the Commission shall notify the Governments, and shall not give its decision on any application for such approval until the Governments have been given an opportunity of objecting thereto: Provided that the Companies shall not, without the approval of the Commission, vary by more than one hundred thousand pounds the allocation of any loan funds in respect of any head of expenditure as approved by the Commission.

The expression “new capital” shall not be deemed to include moneys borrowed in the ordinary course of business for the purpose of temporary accommodation, and the interest and charges in respect of such moneys shall continue to be dealt with as portion of the working expenses of the undertakings.

17. The dividend provision shall be as follows—

- (a) If and whenever the amount standing to the credit of the reserve account does not exceed the amount of the loan provision, no dividend provision shall be made.
- (b) If and whenever the amount standing to the credit of the reserve account is more than the amount of the loan provision and does not exceed one and one-half times the amount of the loan provision, the dividend provision shall be the sum of £75,000.

- (c) If and whenever the amount standing to the credit of the reserve account is more than one and one-half times the amount of the loan provision and does not exceed twice the amount of the loan provision, the dividend provision shall be the sum of £100,000.
- (d) If and whenever the amount standing to the credit of the reserve account is more than twice the amount of the loan provision and does not exceed two and one-half times the amount of the loan provision, the dividend provision shall be the sum of £125,000.
- (e) If and whenever the amount standing to the credit of the reserve account is more than two and one-half times the amount of the loan provision, the dividend provision shall be the sum of £150,000.

18. The reserve provision shall be calculated as follows—

- (a) If and whenever the amount standing to the credit of the reserve account does not exceed two and one-half times the amount of the loan provision, the reserve provision shall be the sum of £150,000, or such lesser sum as is required to bring the amount standing to the credit of the reserve account up to an amount equal to two and one-half times the loan provision.
- (b) If and whenever the amount standing to the credit of the reserve account does not exceed twice the amount of the loan provision and it is anticipated that a surplus of revenue will remain after meeting the loan, dividend, reserve and rates stabilization provisions, there shall, subject to the provisions of section *nineteen (b)*, be an additional reserve provision equal to the amount of such anticipated surplus.
- (c) If and whenever any portion of an anticipated surplus of revenue is not likely to be permanent or recurrent, after providing for the rates stabilization account in accordance with the provisions of section *nineteen (b)*, there shall be a special reserve provision to absorb such portion of the anticipated surplus.

19. The rates stabilization provision shall be as follows—

- (a) If and whenever the amount standing to the credit of the rates stabilization account does not exceed the sum of £500,000, there shall be a rates stabilization provision equal to the amount of the income estimated to be derived from the sums invested in trustee securities as provided in section *twelve*, or to so much thereof as is required to bring the amount standing to the credit of the rates stabilization account up to the sum of £500,000.
- (b) If and whenever the amount standing to the credit of the rates stabilization account does not exceed the sum of £500,000, and any portion of an anticipated surplus of revenue is not likely to be permanent or recurrent, there shall be a special rates stabilization provision to absorb such portion of the anticipated surplus, or so much thereof as is estimated to be required to bring the amount standing to the credit of the rates stabilization account up to the amount of £500,000.

20. The Companies jointly, and each of the Companies separately, as the case may be, shall—

- (i) in the year 1935, as soon as practicable after the coming into operation of this Proclamation; and

- (ii) in every subsequent year on such date as the Commission may fix;

submit to the Commission the following documents:—

- (a) A collective balance sheet of the Companies and separate balance sheets of each of the Companies as at the end of the last preceding year of account.
- (b) Collective statements of the whole of the receipts and expenses on revenue and capital account respectively of the undertakings, and similar separate statements in respect of the undertakings of each of the Companies for the last preceding year of account. Such statements shall be in a form to be prescribed by the Commission, and the revenue statement shall comply with the following requirements:—
- (i) Expenditure on additions or improvements made to the undertakings or undertaking, as the case may be, out of revenue shall be specifically set out.
 - (ii) Any sums produced during the year by the sale of lands or other capital assets shall be excluded from the receipts.
 - (iii) In the event of the accounts of either Company not being complete at the date when the statements are due to be submitted, such Company shall include in the statements the best estimate it can make of the receipts and expenses for the period for which precise figures are not at the time ascertainable.
 - (iv) The basis of any charges against revenue for depreciation or renewal or any other provisions shall be shown.
- (c) A schedule of the railway charges which the Companies propose shall be made in the next succeeding year of account.
- (d) An estimate in such form as the Commission may prescribe of the anticipated receipts and expenses of the undertakings on revenue account for the next succeeding year of account. The estimate of receipts shall include receipts from all sources, and the receipts from railway charges shall be calculated on the basis of the schedule submitted pursuant to the last preceding sub-section; provided that—
- (i) the estimates to be first submitted in the year 1935 shall be for the year of account ending the 30th September, 1935;
 - (ii) if and whenever it is anticipated that the maintenance of the schedule of charges for the preceding year will result in a deficiency in the standard revenue, the Companies may, in framing such estimate, take into account as anticipated receipts the whole or any portion of any amount which they estimate will be standing to the credit of the rates stabilization account at the close of the year in which the estimates are framed; and
 - (iii) for the purpose of effecting a reduction of rates when the amount standing to the credit of the reserve account is equal to or more than twice the loan provision the Companies may, in framing such estimate, take into account as anticipated receipts a portion of the amount which they estimate will be standing to the credit of the rates stabilization account at the close of the year in which the estimates are framed not exceeding one-quarter thereof; provided that the amount standing to the credit of the said account shall not thereby be reduced below the sum of £250,000 estimated as aforesaid.

All documents submitted to the Commission pursuant to this section shall be published by it in such manner as it shall deem fit.

21. (1) It shall be the duty of the Commission annually—

- (a) to examine the documents submitted pursuant to section *twenty*, and to consider any objections which may be lodged with them within the prescribed time and in the prescribed manner, and to hear all parties whom the Commission shall consider to be sufficiently concerned to entitle them to be heard;
- (b) to determine what adjustments, if any, ought to be made, having due regard to efficient and economical management, in the accounts for any year submitted pursuant to section *twenty*, in order to arrive at the amount of the realised income for that year and for the purpose of this Proclamation the amount so arrived at shall be deemed to be the realised income of the Companies for that year;
- (c) to consider the charges in respect of any railway or other business carried on by the Companies or either of them, ancillary or subsidiary to the railways, including the rents of leased lands, the charges for which are not subject to the jurisdiction of the Commission, and if, in the opinion of the Commission, either or both of the Companies are not making or have not taken reasonable steps to enable them to make adequate charges in respect of any such business, to estimate the additional revenue (hereinafter in this section called "the estimated additional revenue") which would, in the opinion of the Commission, be produced by any such business if adequate charges were in operation;
- (d) subject to the provisions of section *thirteen*, to adjust, if necessary, and in so far as in the opinion of the Commission is practicable, the schedule of railway charges, including therein any conditions imposing or affecting such charges submitted pursuant to section *twenty*, so that a net revenue equivalent to the standard revenue for the year to which the schedule relates, calculated according to the provisions of section *fifteen*, will, in the opinion of the Commission, be earned in that year with efficient and economical management; provided that the Commission, in considering the amount of revenue to be earned from any ancillary or subsidiary business, shall take into account the estimated additional revenue;
- (e) to fix the date, whether before, at or after the commencement of the next succeeding year of account, at which the railway charges so adjusted shall come into force.

(2) On and from the date so fixed such charges shall, unless and until the Commission shall otherwise order, be the charges which each of the Companies respectively shall make for all services rendered in respect of which charges are determined.

22. The Companies shall, in addition to the statements mentioned in the preceding sections, furnish to the Commission periodical reports, either quarterly or as the Commission may direct, giving the following particulars:—

- (a) The actual receipts and expenses for the current year to date.
- (b) The anticipated receipts and expenses for each quarter of the remainder of the current year.
- (c) A revised estimate of the anticipated receipts and expenses of the undertakings on revenue account for the next succeeding year.

23. The Commission shall, at the end of each year of account, ascertain the amounts to be carried to the rates stabilization and reserve accounts and the sum available for distribution in dividends for the year by the following calculations:—

(a) If and whenever the amount standing to the credit of the reserve account as at the beginning of the year of account does not exceed the loan provision for the year of account from the total realised income so far as it may suffice for the purpose there shall be deducted, in the following order of priority—

- (i) such portion of the income derived from the trustee securities during the year of account as shall have been provided for in terms of section *nineteen (a)*;
- (ii) the loan service;
- (iii) the amount provided for in terms of section *eighteen (a)*;
- (iv) such portion of the anticipated surplus provided for in terms of section *nineteen (b)* as shall have realised.

The balance of the realised income, if any, shall be carried to the reserve account.

(b) If and whenever the amount standing to the credit of the reserve account as at the beginning of the year of account exceeds the loan provision for the year of account and does not exceed one and one-half times the amount of the said loan provision, from the total realised income so far as it may suffice for the purpose, there shall be deducted, in the following order of priority—

- (i) such portion of the income derived from the trustee securities during the year of account as shall have been provided for in terms of section *nineteen (a)*;
- (ii) the loan service;
- (iii) the amount provided for in terms of section *eighteen (a)*;
- (iv) the dividend sum of £75,000;
- (v) such portion of the anticipated surplus provided for in terms of section *nineteen (b)* as shall have been realised.

The balance of the realised income, if any, shall be carried to the reserve account.

(c) If and whenever the amount standing to the credit of the reserve account as at the beginning of the year of account exceeds one and one-half times the loan provision for the year of account, but does not exceed twice the amount of the said loan provision, the provisions of paragraph (b) of this section shall apply, save that the dividend sum shall be £100,000 instead of £75,000.

(d) If and whenever the amount standing to the credit of the reserve account as at the beginning of the year of account exceeds twice the loan provision for the year of account, but does not exceed two and one-half times the amount of the said loan provision, the provisions of paragraph (b) of this section shall apply, save that—

- (i) the dividend sum shall be £125,000 instead of £75,000;
- (ii) should the total realised income be insufficient to provide the sum of £150,000 or the lesser sum mentioned in section *eighteen (a)* and the dividend sum of £125,000, the deficiency shall be apportioned between the dividend sum and the sum to be carried to the reserve account respectively, in the proportion which the dividend sum bears to the reserve provision for that year.

(e) If and whenever the amount standing to the credit of the reserve account as at the beginning of the year of account exceeds two and one-half times the loan provision, and the amount standing to the credit of the rates stabilization account is less than the sum of £500,000, the provisions of paragraph (b) of this section shall apply, save that—

- (i) no deduction shall be made in respect of the sum provided for in terms of section *eighteen* (a);
- (ii) the dividend sum shall be £150,000 instead of £75,000, together with a sum equal to ten per centum of the excess, if any, of the realised income over the standard revenue for that year;
- (iii) the remaining balance of the excess aforesaid, or so much thereof as is required to bring the amount of that account up to the sum of £500,000, shall be carried to the rates stabilization account and thereafter the remainder of the excess, if any, shall be carried to the reserve account.

(f) If and whenever the amount standing to the credit of the reserve account as at the beginning of the year of account exceeds two and one-half times the loan provision, and the amount standing to the credit of the rates stabilization account is £500,000, from the total realised income, so far as it may suffice for the purpose, there shall be deducted, in the following order of priority—

- (i) the loan service;
- (ii) the dividend sum of £150,000, together with a sum equal to ten per centum of the excess, if any, of the realised income over the standard revenue for that year.

The balance of the realised income, if any, shall be carried to the reserve account.

If and whenever the allocation of any sum to the rates stabilization account in accordance with any of the provisions of the foregoing paragraphs of this section would cause the amount standing to the credit of that account to exceed the sum of £500,000, the amount of such excess shall be carried instead to the credit of the reserve account.

24. (1) The Companies shall send to the Commission as soon as possible after the end of each year of account a statement showing the manner in which the sum available for distribution in dividend calculated in accordance with section *twenty-three* has been allocated between the Companies.

(2) If the Companies fail within a reasonable time after the end of each year of account to make such allocation, the Commission may provisionally determine the manner in which such allocation is to be made, and until the Companies shall have made such allocation and shall have given notice thereof to the Commission, the provisional allocation made by the Commission shall, as between the Companies, be valid and binding.

(3) Neither of the Companies shall distribute in dividend or in any other manner any greater sum than the sum which shall in the allocation so submitted or settled as aforesaid be allocated to that Company for that purpose, except with the consent of the Commission, who shall be satisfied that such distribution will not contravene the provisions of this Proclamation.

(4) The sum of £906,153. 12s. 5d. standing to the credit of the net revenue account in consequence of the provisions of section *nineteen* of the Railway Proclamation, 1927, shall, unless the Governments, on the application of the Companies, or either of them, otherwise determine, continue to remain in the undertakings.

25. Notwithstanding the provisions of section *thirteen*, the Commission may, on the application of the Companies, or either of them, allow the temporary reduction of any railway charge or charges. Such application shall, where possible, be made and dealt with summarily.

26. (1) Nothing in this Proclamation contained shall prejudice or affect the power of the Companies, or either of them, to impose railway charges and to make rebates, allowances or reductions on such charges under (a) contracts entered into by the Companies, or either of them, prior to the first day of September, 1926, or (b) contracts entered into by the Companies, or either of them, with the approval of the Commission before the coming into operation of this Proclamation for the periods and according to the terms by such contracts respectively provided.

(2) After the issue of this Proclamation, the Companies shall not enter into contracts and arrangements to grant exceptional rates, except with the consent of the Commission.

27. (1) The benefits and obligations of any contracts or arrangements entered into by the Companies, or either of them, prior to the 1st September, 1926, and in force on that date, for acquiring, working, managing or sharing profits over any section of railways not included in the undertakings, but now or hereafter worked in conjunction with them or either of them, shall enure to the undertakings as a whole, and shall not be varied or cancelled save with the consent of the Commission.

(2) The benefits and obligations of any such contracts or arrangements as are described in sub-section (1) of this section entered into by the Companies, or either of them, on or after the 1st September, 1926, shall enure to the undertakings as a whole, save in so far as the Commission shall be of opinion as regards any such contracts or arrangements that they may unduly enhance the relative value of any such section or sections and correspondingly diminish unduly the relative value of the Companies, or either of them; and the Commission shall, for the purposes of section *twenty-one* of this Proclamation, take into account such additional revenue as would have been produced if such undue diminishment had not been effected.

(3) If any contract or arrangement referred to in the last preceding sub-section shall have received the approval of the Commission or the Commission appointed under the provisions of the Railway Proclamation, 1927, then the terms of the said sub-section shall not apply thereto, except the provision that the benefits and obligations of such contract or arrangement shall enure to the undertakings as a whole.

28. Any of the Governments or either or both of the Companies or any representative body of traders, or any person who is, in the opinion of the Commission, a proper person for the purpose, shall be entitled at any time to apply to the Commission to modify railway charges or any of them, and if any such Government, Company or body of traders or person, as the case may be, prove to the satisfaction of the Commission that the railway charges, including any conditions imposing or affecting charges, ought to be modified, the Commission shall, subject to the provisions of section *thirteen*, make such modifications as it thinks fit, and shall fix the date as from which the modified railway charges or conditions or classifications shall be effective, and may limit a period for their operation.

Provided that when modifying railway charges upon an application under this section, the Commission shall have regard to the like considerations as when adjusting railway charges under section *twenty-one*.

29. Where any through charge shall have been quoted by the Companies, or either of them, or fixed by the Commission, the same shall be apportioned as shall be agreed between the Companies. If the Companies fail to agree, the Commission shall apportion such charge, and in so doing shall take into account all the circumstances of the case.

30. All rates and fares shall at all times be charged equally to all companies or persons and at the same rate, whether per ton, per mile or otherwise, in respect of all passengers and of all goods of the same description, and conveyed or transported by like conveyance or engine passing only over the same portion of the line of railway under the same circumstances and conditions, and no reduction or advance in any such rates or fares shall be made directly or indirectly in favour of or against any particular company or person travelling upon or using the railways except where otherwise provided in this Proclamation.

31. The Companies shall not nor shall either of them make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic in any respect whatsoever, nor shall the Companies, or either of them, subject any particular person or company or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatever.

Whenever it is shown that the Companies charge one trader or class of traders or the traders in any district lower charges for the same or similar services than they charge to other traders or classes of traders or to the traders in another district, or make any difference in treatment in respect of any such trader or traders, the burden of proving that such lower charges or difference in treatment do not amount to an undue preference shall lie on the Companies.

In deciding whether a lower charge or difference in treatment does or does not amount to an undue preference, the Commission may, so far as it thinks reasonable, in addition to any other considerations affecting the case, take into consideration whether such lower charge or difference in treatment is necessary for the purpose of securing the traffic in respect of which it is made, or is, in the opinion of the Commission, for any other reason desirable in the interests of the public or of trade, and whether the inequality cannot be removed without unduly reducing the rates charged to the complainant.

Provided that until the 30th September, 1936, the practice of applying country produce rates or distribution or re-forwarding rates for goods consigned from stations recognised from time to time as distribution centres and the granting of such country produce or distribution or re-forwarding rates shall not be deemed to constitute an undue preference.

For the purposes of this section, "country produce rates" means preferential rates for goods grown, produced or manufactured in whole or in part in the Bechuanaland Protectorate, Northern Rhodesia, Southern Rhodesia, the Union of South Africa, Congo Belge or Portuguese East Africa.

32. The Companies or either of them may, with the approval of the Commission, quote new railway charges.

33. The railways shall continue to be operated, as they are at the present time, by a central administration, and traffic shall be enabled to pass throughout the whole of the railways owned or worked by the Companies as one continuous line, and each of the Companies shall handle the traffic of the other as though it were its own traffic, and each Company shall be entitled to quote through rates and fares to and from any point on its system from and to any point on the system of the other Company, and to run over and use for all purposes of railway traffic the whole of the said railways and all stations, sidings and other conveniences connected therewith.

34. Any costs awarded against the Companies or either of them in terms of rules made under section *seven* (1) (b), and any penalties awarded under section *eleven* (3), shall be deducted from the dividend sum and shall not be defrayed by the Companies as part of their working expenses.

Any damages or costs awarded against the Companies or either of them in terms of section *thirty-five* shall not be defrayed by the Companies as part of their working expenses unless the Commission shall be satisfied that the act or omission in respect of which such damages or costs were awarded was not due to a wilful or deliberate disregard of the provisions of this Proclamation.

If in any year of account there is no dividend sum, or the dividend sum is insufficient to meet any damages or costs aforesaid or any portion thereof, the amount of such damages or costs which has not been met shall be deducted as soon as possible from the dividend sum of any subsequent year or years of account.

35. (1) It shall be lawful for any company or person complaining against the Companies, or either of them, of anything done or of any omission made in violation or contravention of this Proclamation to apply in a summary way to the Commission; it shall also be lawful for any of the Governments, through its duly authorised officer, to apply in like manner to the Commission, and in either of such cases it shall be lawful for the Commission to hear and to determine the matter of such complaint; and if it be made to appear to the Commission that anything has been done or omission made in violation or contravention of this Proclamation by the Companies, or either of them, it shall be lawful for the Commission to award damages to the injured party and to issue an interdict restraining the Companies, or either of them, from further continuing such violation or contravention of this Proclamation, and enjoining obedience to the same, and any order or judgment of the Commission shall as regards any person cause matter or thing within the jurisdiction of the Courts of the Bechuanaland Protectorate be deemed to be an order or judgment of the Special Court of the Bechuanaland Protectorate, and shall be enforced in like manner as an order or judgment of that Court; and in any such proceeding as aforesaid the Commission may, subject to the provisions of this Proclamation, order and determine that all or any costs thereof or thereon incurred shall and may be paid by or to the one party or the other, as the Commission may think fit: Provided that—

- (a) no damages shall be awarded by the Commission in respect of any application made to the Commission under this section, unless such application shall have been made to the Commission within one year after the discovery by the applicant of the matter in respect of which such application is made; and
- (b) in cases of complaint of undue preference, no damages shall be awarded if the Commission shall find that the rates complained of have for the period during which such rates have been in operation been duly published in the rate books of the Companies kept at their stations, unless and until the party complaining shall have given written notice to the Companies requiring them to abstain from or remedy the matter of complaint, and the Companies shall have failed within a reasonable time to comply with such requirements in such manner as the Commission shall think reasonable.

(2) The jurisdiction of the Special Court of the Bechuanaland Protectorate is hereby extended so as to include all causes or matters in the Bechuanaland Protectorate arising under this Proclamation for the hearing and determination of which

other provision is not herein made and in particular the matters referred to in section *ten* and this section of this Proclamation.

36. For the purposes of this Proclamation, each Company shall be entitled to defray as part of its working expenses any income tax paid by it other than that recoverable from any other company or person.

37. In the event of the purchase of the undertakings by the Governments, or any of them, no payment shall be made to the Companies in respect of—

- (a) loan capital redeemed through the operation of any sinking fund approved under section *sixteen* (b) and provided for in the standard revenue;
- (b) the credit balance in any such sinking fund;
- (c) the credit balance in the reserve account; and
- (d) the credit balance in the rates stabilization account.

38. The Companies and the Commission are hereby indemnified for not having observed the provisions of section *fourteen* of the Railway Proclamation, 1927, inasmuch as the Companies did not before the 30th September, 1934, submit estimates for the year ending the 30th September, 1935.

39. The Railway Proclamation, 1927, is here repealed: Provided that—

- (a) the rules and scale of fees made under section *five* of the Proclamation hereby repealed and in force at the time of the coming into operation of this Proclamation shall be deemed to have been made under this Proclamation;
- (b) this repeal shall not relieve—
 - (i) the Companies from the obligation of preparing and submitting to the Commission accounts and returns in terms of section *nine* of the Proclamation hereby repealed in respect of the year of account ended the 30th September, 1934;
 - (ii) the Commission of the obligation of determining the amount to be carried to the reserve account in respect of the year of account ended the 30th September, 1934, in accordance with the provisions of section *seventeen* of the Proclamation hereby repealed.

40. Any Proclamation repealing this Proclamation or amending any of its financial provisions shall not take effect until His Majesty's pleasure thereupon has been signified.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this Second day of July One thousand Nine hundred and Thirty-five.

W. H. CLARK,
High Commissioner.

By Command of His Excellency the
High Commissioner.

H. E. PRIESTMAN,
Administrative Secretary.

THE SCHEDULE
OF LOAN CAPITAL AND INTEREST THEREON AS AT 30TH
SEPTEMBER, 1934.

1. *Rhodesia Railways, Limited*—

	<i>Amount Outstanding.</i>	<i>Rate of Interest.</i>	<i>Annual Charge for Interest.</i>
	£	Per cent.	£
3% Debentures (guaranteed)..	252,870	3	7,586
4% Debentures (guaranteed)..	3,996,333	4	159,853
5% Debentures (unguaranteed)	1,831,800	5	91,590
6% Rhodesia & Mashonaland Railways Consolidated De- bentures (unguaranteed) (proportion of total issue of £10,000,000).....	6,000,000	6	360,000
	£12,081,003		£619,029

2. *Mashonaland Railway Com-
pany, Limited*—

5% Debentures (unguaranteed)	1,845,900	5	92,295
5% Debentures (guaranteed)..	2,560,000	5	128,000
6% Rhodesia & Mashonaland Railways Consolidated De- bentures (unguaranteed) (proportion of total issue of £10,000,000).....	4,000,000	6	240,000
TOTAL.....	£20,486,903		£1,079,324