



FRIENDS OF THE RAIL

Established 1986

Preserving South African Railway History

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28 February 2011

Notice to Members

Proposed amendments to the association's constitution

The board of Friends of the Rail wishes to apply for formal registration with the Department of Social Services as a non-profit organisation in terms of the "Non-profit Organisations Act", Act No 71 of 1997. This is necessary to validate FOTR's non-profit status, acquire an "NPO number" and generally make it easier to raise funds by donation.

In order to be so registered, section 12 of the NPO Act requires that the Association's Constitution must contain certain compulsory provisions and clauses. The majority of the clauses required are indeed present in the constitution at present.

However two clauses in particular never incorporated into the original Constitution and need to be inserted to become compliant with the NPO Act and enable an application for registration. This application is considered to be urgent because it will enable the Company to unlock certain funds provided by donors for the repair of locomotive 3117.

One missing clause contains the definition of the financial year and the other is to grant the Company (Association) specific powers to open and operate bank accounts.

The board also believes that it would be wise to provide better protection for officers (including employees) of the company by strengthening the indemnities for directors and officers.

To strengthen the powers of the Company in respect of donations, the board recommends the addition of clauses to the constitution specifically permitting the Company to raise, invest and manage funds from donors, as well as providing an obligation to report on their status and usage.

The board has considered the proposals and recommends that the Constitution (FOTR document R-005-a040301) should be amended as set out below. As required by the Constitution, this proposal is being circulated to all members of the Company. The amendments will be placed on the agenda for discussion and formal approval at the AGM on 26 March 2011.

The Friends of the Rail Association - incorporated under section 21, "not for gain"
Registration No. 95/09790/08

Directors: SG Appleton*, NH Berelowitz (Chairman), LJ Hagen, CE Janisch (Secretary),
JA Koch, SJ Smith, AC Victor, WD Victor, KR Wilson-Smith* (* British)

Friends of the Rail

Members can request a copy of the existing constitution from the Company or obtain an electronic copy in PDF format from the FOTR website at this location:

<http://www.fotr.co.za/inside/doc2/R-005-a040301-FOTR-constitution.pdf>

The amendments as proposed:

1. Add a more comprehensive title as follows:

Constitution of Non-profit Company not having Share Capital
Company name: The Friends of the Rail Association
Company Registration No.: 1995/009790/08
(Association Incorporated under Section 21 of Companies Act, No 61 of 1973)

2. Within section 3, under “Interpretation” insert:

3.14 “Financial Year” shall mean the financial accounting year of the Company which shall be for the 12-month period commencing on the first day of January and ending on the last day of December each year.

3. Within section 9, under “Indemnity” delete the existing clause 9.3 and then insert:

9.3 Every director, officer and employee of the Company, and any person employed by the Company as auditor, shall be indemnified and secured harmless out of the funds of the company against all actions, liabilities costs, damages and expenses incurred by him as such director, officer, employee or auditor, in defending any proceedings brought against him whilst carrying out his bona fide duties for the Company, whether civil or criminal, in which judgement is given in his favour, or in which he is acquitted, or in respect of any proceedings which are abandoned, or in which relief is granted to him by a court of law.

9.4 No director, officer or employee of the Company shall be liable for

- acts, receipts, neglects or defaults of any other director, officer or employee, or
- for any loss or expense happening to the Company through the insufficiency or deficiency of any security in or upon which any of the moneys of the Company shall be invested, or
- for any loss or damage arising from the bankruptcy, insolvency or tortuous acts of any persons with whom any moneys, securities or effects shall be deposited, or
- for any loss or damage occasioned by any error of judgement or oversight on his part, or
- for any other loss, damage or misfortune whatever which shall happen in the bona fide execution of the duties of his office or in relation thereto, unless any of these happen through his own gross negligence, default, breach of duty, dishonesty, breach of trust or criminal act.

9.5 If a director, officer or employee of the Company becomes personally liable for the payment of an amount primarily due from the Company, the Board may execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the Director or other person from incurring any personal loss in respect of that liability.

4. Within section 12, under “Powers of the Company” insert:

12.8 To open and operate bank accounts in the name of the Company and to draw, accept, endorse, make and execute bills of exchange, promissory notes, cheques, on-line transfers and other negotiable instruments connected with the business and financial affairs of the Company.

12.9 Invest any surplus moneys (including donations) not immediately required for the objectives of the Company with registered financial institutions as defined in the Financial Institutions (Investment of Funds) Act, 2001, or in securities listed on a licensed securities or stock exchange as defined in the Stock Exchange Control Act, 1985.

12.10 To establish, manage, invest and account for the use of specified donation funds and to appeal for public donations to those funds as may be required to provide for any specific need, activity or program related to the Company’s objectives and to apply or disperse those funds as necessary in the execution of those specific projects or activities.

12.11 To account for and provide reports to members and donors on the status and use of any donation funds which are raised in terms of section 12.9 above.

End of proposed amendments.