

AERIAL TRAMWAYS ORDINANCE 1938.⁽¹⁾

No. 46 of 1938.

An Ordinance Relating to Aerial Tramways.

BE it ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act 1920-1935*, as follows:—

1. This Ordinance may be cited as the *Aerial Tramways Ordinance 1938*.⁽¹⁾ Short title.

2. In this Ordinance, unless the contrary intention appears— Definitions.

“Administration land” includes all lands the right, title, estate, interest, control, or prerogatives of the Government in, over, or to which passed to the Commonwealth in the terms of the *Laws Repeal and Adopting Ordinance 1921-1937*⁽²⁾ and all lands vested in the Administration which have not been granted in fee simple or lawfully contracted to be so granted, and includes all native lands;

“Order” means an Order of the Administrator in Council made under this Ordinance;

“Regulations” means regulations made under this Ordinance;

“Secretary for Lands” means the Secretary, Department of Lands, Surveys, Mines, and Forests;

“the Undertaker” means any person who by an Order under this Ordinance is authorized to construct, maintain, and operate an aerial tramway;

“works” includes any buildings, structures, machinery, engines, works, towers, posts, carriers, ropes, and cables, of whatever description, required to carry into effect the object of the Undertaker under this Ordinance and all matters and things connected with any works.

(1) Particulars of this Ordinance are as follows:—

Date of Reservation by Administrator.	Date on which assent of Governor-General in Council published in <i>N.G. Gaz.</i>	Date on which came into operation.
25.8.1938	31.10.1938	31.10.1938 (<i>N.G. Gaz.</i> of 31.10.1938)

(2) Now the *Laws Repeal and Adopting Ordinance 1921-1939*.

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Power to make Order authorizing erection and operation of aerial tramway.

3. Subject to this Ordinance, the Administrator in Council may, by order, authorize any person to construct, maintain, and operate an aerial tramway.

Application for Order.

4.—(1.) An application for an Order shall be addressed to the Administrator and shall be lodged at the office of the Secretary for Lands at Rabaul and shall be accompanied by—

- (a) a plan, in triplicate, drawn to a scale of not less than one in fifty thousand, showing the points between which and the land upon and over which the aerial tramway is proposed to be constructed;
- (b) a statement setting forth such particulars relating to the applicant and the proposed aerial tramway as the Administrator directs; and
- (c) an application fee of Twenty-five pounds.

(2.) Every person applying for an Order shall publish notice of the application for an Order in the *New Guinea Gazette* specifying the points between which the aerial tramway is proposed to be constructed.

(3.) The Secretary for Lands shall forward a copy of the application for an Order and a copy of the plan lodged under sub-section (1.) of this section to the District Officer of the District in which the aerial tramway is proposed to be constructed, who shall post and keep posted at his office the copy of the application for an Order and the copy of the plan for a period of not less than twenty days.

(4.) The Administrator in Council shall not make an Order until after the expiration of thirty days from the date of the publication of the notice referred to in sub-section (2.) of this section or of the posting of the copy of the application for an Order and the copy of the plan under the last preceding sub-section, whichever is the later.

Objections.

5. Within twenty-five days after the publication of the notice referred to in sub-section (2.) of the last preceding section or of the posting of the copy of the application for an Order and the copy of the plan under sub-section (3.) of that section, whichever is the later, any person may object to the application for an Order by lodging, at the office of the Secretary for Lands or at the office of the District Officer of the District in which the aerial tramway is proposed to be constructed, a notice in writing stating the particulars of his objection.

Power to make Order subject to conditions.

6. An Order may be made subject to such provisions and conditions as are specified in the Order and are not inconsistent with the provisions of this Ordinance and to a charge to be paid annually by the Undertaker for the right to construct, maintain, and operate the aerial tramway referred to in the Order.

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7.—(1.) Subject to this Ordinance and the provisions and conditions of the Order, an Order shall be for such term not exceeding fifteen years as is fixed by the Order: Term of Order.

Provided that such term may, on the application of the Undertaker, be extended for successive terms not exceeding ten years.

(2.) The Administrator in Council may extend the term of an Order under the last preceding sub-section subject to such provisions and conditions as he thinks fit, and such provisions and conditions shall be deemed to be inserted in the Order in addition to or in lieu of the provisions and conditions in force prior to the date of the extension of the term of the Order as the case may be.

8. Subject to this Ordinance, the Regulations, and the provisions and conditions of the Order, the Undertaker may, during the currency of the Order, construct any works and do all other acts which the Undertaker thinks necessary to construct, maintain, and operate the aerial tramway referred to in the Order upon and over the Administration land described in the Order: Power to erect works on Administration land.

Provided that no works shall be constructed upon any site other than a site approved by the Administrator or by a person authorized by him to give such approval.

9. Nothing in this Ordinance or in any Order shall authorize the Undertaker to construct, maintain, or operate any aerial tramway upon or over any land other than Administration land or to construct any works upon Administration land held by any person under the *Land Ordinance 1922-1938*⁽³⁾ or the *Mining Ordinance 1928-1936*⁽⁴⁾ without the consent of the person by law entitled to give such consent, or, where such consent is refused in respect of Administration land, without the authorization of the Administrator in Council given under the next succeeding section: Protection of rights of owner, &c., of land.

Provided that where an aerial tramway has been lawfully constructed upon or over any land the Undertaker may, subject to the proviso to the last preceding section, do whatever is necessary upon or over such land to maintain and operate the aerial tramway.

10. The Administrator in Council may authorize the construction of any works upon any site upon Administration land held by any person under the *Land Ordinance 1922-1938*⁽³⁾ or the *Mining Ordinance 1928-1936*⁽⁴⁾ upon such conditions as he thinks fit and upon payment of compensation determined in the manner and by the court or person prescribed. Power to authorize construction of works on Administration land held under *Land Ordinance 1922-1938*, &c.

11. An aerial tramway or works shall not be constructed or operated upon or over land within the boundaries of any town without the consent of the Administrator in Council. Construction of aerial tramway in towns prohibited.

Penalty: Five hundred pounds.

(3) Now the *Land Ordinance 1922-1941*.

(4) Now the *Mining Ordinance 1928-1940*.

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Security.

12.—(1.) Within three months after the commencement of an Order, the Undertaker shall lodge with the Administrator a guarantee in accordance with the prescribed form with at least one surety approved by the Administrator in the sum of Five thousand pounds for the observance of the provisions of this Ordinance and the Regulations and of the provisions and conditions of the Order and for the payment of any penalties, damages, and costs which may be adjudged or recovered against him under this Ordinance or the Regulations or in any action for damages arising out of or in relation to the death of any person or bodily injury to any person sustained through, by, or in connection with the construction, maintenance, or operation of the aerial tramway referred to in the Order.

(2.) The Administrator may, by notice in writing, at any time during the currency of an Order, require the Undertaker to replace, within three months from the date specified in the notice, the guarantee given under the last preceding sub-section by a guarantee to the same amount and otherwise in accordance with the provisions of that sub-section.

(3.) If the Undertaker fails to comply with the provisions of either of the last two preceding sub-sections, the Administrator in Council may revoke the Order.

Assignment
of rights
under Order.

13.—(1.) The Undertaker may, with the approval of the Administrator, assign to any person his rights under the Order.

(2.) When the approval referred to in the last preceding sub-section has been given, the person to whom the assignment has been made shall be deemed and taken to be the Undertaker, and shall have the like powers and be subject to the like liabilities and obligations as the Undertaker would have had and been subject to under this Ordinance and the Order if the assignment had not been made.

Regulations
to secure
safety of
public.

14.—(1.) The Administrator in Council may make regulations⁽⁵⁾ for securing the safety of the persons and property of the public, and may, by regulation, amend or repeal any provision or condition contained in an Order in relation thereto.

(2.) Any such provision or condition so amended in an Order shall, from and after the date of the amendment, have the like effect in every respect as though it had been originally inserted in the Order.

(3.) Where a provision or condition is repealed, the repeal shall not affect any liability incurred in respect thereof prior to the date of the repeal or any proceeding or remedy which might have been had in relation thereto.

(5) No regulations have been made.

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15. The Undertaker shall be alone answerable for all accidents, damages, and injuries happening through his act or default, or through the act or default of any person in his employment, or by reason or in consequence of the aerial tramway or any of his works.

Undertaker
alone
responsible
for damages.

16.—(1.) Any person appointed by the Administrator may enter, inspect, and examine any works, and, whenever he finds that any works or any part thereof, or any matter, thing, or practice in or connected with any works or in connection with the control, management, or direction of any aerial tramway, is dangerous or defective, may, by requisition in writing addressed to the Undertaker, specify the nature of the danger or defect and require that the matter complained of be remedied forthwith or within the time specified in the requisition.

Inspection.

(2.) The Undertaker aggrieved by a requisition made under the last preceding sub-section may appeal to the Administrator in such manner, and within such time, as is prescribed.

(3.) When an appeal has been made, the Administrator may confirm, vary, or annul the requisition.

(4.) The Undertaker who refuses or fails to comply with a requisition made under sub-section (1.) of this section or with any such requisition as confirmed or varied under the last preceding sub-section shall be guilty of an offence.

Penalty: One hundred pounds.

17. Upon the determination, under this Ordinance or the provisions or conditions of the Order, of an Order, the Administrator may, by notice, require the Undertaker to remove his works, and, if the Undertaker fails to remove his works within twelve months from the publication of the notice, the works shall become the property of the Administration.

Removal of
works on
determination
of Order.

18. Nothing in this Ordinance shall prevent the grant or the revocation by the Administrator under Part VIB. of the *Mining Ordinance 1928-1936*⁽⁴⁾ of authority to construct and maintain over, upon, across, or through any Administration or other land any aerial ropeway.

Saving.

19.—(1.) The Administrator in Council may make regulations,⁽⁵⁾ not inconsistent with this Ordinance, prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and prescribing all matters providing for and in relation to the construction, maintenance, and operation of aerial tramways.

Power to make
Regulations.

(2.) Regulations made under this Ordinance may impose penalties not exceeding Fifty pounds for offences against the Regulations or for the failure or omission to observe or comply with the provisions of the Regulations.

(4) Now the *Mining Ordinance 1928-1940.*

(5) No regulations have been made.