

No. 2830

**INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
and
ECUADOR**

Guarantee Agreement—Guayas Highway Project—(with annexed Loan Agreement—Guayas Highway Project—between the Bank and Comité Ejecutivo de Vialidad de la Provincia del Guayas, and Loan Regulations No. 4). Signed at Washington, on 10 February 1954

Official text: English.

Registered by the International Bank for Reconstruction and Development on 4 May 1955.

**BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
ÉQUATEUR**

Contrat de garantie — *Projet routier de Guayas* — (avec, en annexe, le Contrat d'emprunt — *Projet routier de Guayas* — entre la Banque et le Comité Ejecutivo de Vialidad de la Provincia del Guayas, et le Règlement n° 4 sur les emprunts). Signé à Washington, le 10 février 1954

Texte officiel anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 4 mai 1955.

No. 2830. GUARANTEE AGREEMENT¹ (*GUAYAS HIGHWAY PROJECT*) BETWEEN THE REPUBLIC OF ECUADOR AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 10 FEBRUARY 1954

AGREEMENT, dated February 10, 1954 between the REPUBLIC OF ECUADOR (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by an agreement of even date herewith between the Bank and Comité Ejecutivo de Vialidad de la Provincia del Guayas (hereinafter called the Borrower), which agreement and the schedules therein referred to are hereinafter called the Loan Agreement,² the Bank has agreed to make to the Borrower a loan in various currencies in an aggregate principal amount equivalent to eight million five hundred thousand dollars (\$8,500,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee the payment of the principal, interest and other charges on such loan; and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to guarantee the payment of the principal, interest and other charges on such loan;

NOW THEREFORE the parties hereto hereby agree as follows :

Article I

Section 1.01. The parties to this Guarantee Agreement accept all the provisions of Loan Regulations No. 4 of the Bank dated October 15, 1952³ (hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

Article II

Section 2.01. Without limitation or restriction upon any of the other covenants on its part in this Guarantee Agreement contained, the Guarantor

¹ Came into force on 1 December 1954, upon notification by the Bank to the Government of the Republic of Ecuador.

² See p. 270 of this volume.

³ See p. 284 of this volume.

hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and the interest and other charges on, the Loan, the principal of and interest on the Bonds, the premium, if any, on the prepayment of the Loan or the redemption of the Bonds, all as set forth in the Loan Agreement and in the Bonds.

Section 2.02. (a) The Guarantor shall not take and, within the limits of its constitutional powers shall not permit any of its political subdivisions or agencies to take, any action which would prevent or interfere with the performance by the Borrower of any of the covenants, agreements and obligations of the Borrower contained in the Loan Agreement; and the Guarantor shall take or cause to be taken all reasonable action which shall be necessary to enable the Borrower to perform such covenants, agreements and obligations.

(b) Without limitation or restriction upon the foregoing provisions of this Section, the Guarantor specifically undertakes, whenever there is reasonable cause to believe that the funds available to the Borrower will be inadequate to meet the estimated expenditures required for carrying out the Project, to make arrangements, satisfactory to the Bank, promptly to provide the Borrower or cause the Borrower to be provided with such funds as are needed to meet such expenditures.

Article III

Section 3.01. It is the mutual intention of the Guarantor and the Bank that no external debt hereafter incurred shall enjoy any priority over the Loan by way of a lien on governmental assets or by way of priority in the allocation or realization of foreign exchange. To that end, the Guarantor and Banco Central del Ecuador undertake that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Guarantor or of the Banco Central del Ecuador, as security for any external debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds, and that in the creation of any such lien express provision will be made to that effect. Within the limits of its constitutional powers, the Guarantor will make the foregoing undertaking effective with respect to liens on assets of any of the Guarantor's agencies including agencies granted autonomy by the Constitution of Ecuador (other than Banco Central del Ecuador), or any of the Guarantor's political subdivisions or of any agency of any such political subdivision, and to the extent that the Guarantor is unable within the limits of its constitutional powers to make such undertaking effective, the Guarantor will give to the Bank an equivalent lien satisfactory to the Bank. The foregoing provisions of this Section shall not apply to : (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; (ii) any lien on commercial goods to secure a debt maturing not more than one year after the date on which it is originally incurred and to be paid out of the proceeds of sale of such commercial goods;

(iii) any lien arising in the ordinary course of banking transactions to secure a debt maturing not more than one year after the date on which it is originally incurred; or (iv) any lien solely upon revenues or receipts in currency of the Guarantor which is given by a political subdivision (*consejo provincial* or *municipalidad*) or by an agency of a political subdivision of the Guarantor under arrangements containing no provisions which would result in priority in the allocation or realization of foreign exchange.

Section 3.02. (a) The Guarantor and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request with regard to the general status of the Loan. On the part of the Guarantor, such information shall include information with respect to financial and economic conditions in the territories of the Guarantor and the international balance of payments position of the Guarantor.

(b) The Guarantor and the Bank shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Loan and the maintenance of the service thereof. The Guarantor shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

(c) The Guarantor shall afford all reasonable opportunity for accredited representatives of the Bank to visit any part of the territories of the Guarantor for purposes related to the Loan.

Section 3.03. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid without deduction for, and free from, any taxes or fees imposed under the laws of the Guarantor or laws in effect in its territories; provided, however, that the provisions of this Section shall not apply to taxation of, or fees upon, payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of the Guarantor.

Section 3.04. This Guarantee Agreement, the Loan Agreement and the Bonds shall be free from any taxes or fees that shall be imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof.

Section 3.05. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid free from all restrictions imposed under the laws of the Guarantor or laws in effect in its territories.

Article IV

Section 4.01. The Guarantor shall endorse, in accordance with the provisions of the Loan Regulations, its guarantee on the Bonds to be executed and delivered by the Borrower. The Ambassador of Ecuador to the United States and such person or persons as he shall designate in writing are designated as the authorized representatives of the Guarantor for the purposes of Section 6.12 (b) of the Loan Regulations.

Article V

Section 5.01. The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations :

For the Guarantor :

Republic of Ecuador, Embassy of Ecuador, 2320 Bancroft Place, N.W., Washington, D. C., United States of America.

For the Bank :

International Bank for Reconstruction and Development, 1818 H Street, N.W., Washington 25, D. C., United States of America.

Section 5.02. The *Ministro de Tesoro* of the Guarantor is designated for the purposes of Section 8.03 of the Loan Regulations.

IN WITNESS WHEREOF, the Guarantor and the Bank, acting through their representatives thereunto duly authorized, have caused this Guarantee Agreement to be signed in their respective names and delivered in the District of Columbia, United States of America, as of the day and year first above written, and Banco Central del Ecuador, acting through its duly authorized representative, has evidenced its acceptance of its obligations under Section 3.01 of this Agreement.

Republic of Ecuador :

By José R. CHIRIBOGA v.
Authorized Representative

Banco Central del Ecuador :

By José R. CHIRIBOGA v.
Authorized Representative

International Bank for Reconstruction and Development :

By R. L. GARNER
Vice-President

LOAN AGREEMENT

(GUAYAS HIGHWAY PROJECT)

AGREEMENT, dated February 10, 1954 between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and COMITÉ EJECUTIVO DE VIALIDAD DE LA PROVINCIA DEL GUAYAS (hereinafter called the Borrower).

Article I

LOAN REGULATIONS

Section 1.01. The parties to this Loan Agreement accept all the provisions of Loan Regulations No. 4 of the Bank dated October 15, 1952¹ (hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

Article II

THE LOAN

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions in this Loan Agreement set forth or referred to, an amount in various currencies equivalent to eight million five hundred thousand dollars (\$8,500,000).

Section 2.02. The Bank shall open a Loan Account on its books in the name of the Borrower and shall credit to such Account the amount of the Loan. The amount of the Loan may be withdrawn from the Loan Account as provided in, and subject to the rights of cancellation and suspension set forth in, the Loan Regulations. No withdrawals from the Loan Account shall be made in respect of the ferryboats referred to in paragraph 3 of Schedule 2² until the Borrower shall have obtained (1) firm prices for their reconditioning, if the ferryboats have previously been used, and (2) assurances satisfactory to the Bank that such ferryboats are suitable for operation between the cities of Guayaquil and Duran on the Guayas River.

Section 2.03. The Borrower shall pay to the Bank a commitment charge at the rate of three-quarters of one per cent ($\frac{3}{4}$ of 1%) per annum on the principal amount of the Loan not so withdrawn from time to time.

The date specified for the purposes of Section 2.02 of the Loan Regulations is 60 days after the date of this Agreement or the Effective Date, whichever shall be the earlier.

Section 2.04. The Borrower shall pay interest at the rate of four and five-eighths per cent ($4\frac{5}{8}\%$) per annum on the principal amount of the Loan so withdrawn and outstanding from time to time.

¹ See p. 284 of this volume.

² See p. 282 of this volume.

Section 2.05. Except as the Bank and the Borrower shall otherwise agree, the charge payable for special commitments entered into by the Bank at the request of the Borrower pursuant to Section 4.02 of the Loan Regulations shall be at the rate of one-half of one per cent ($\frac{1}{2}$ of 1%) per annum on the principal amount of any such special commitments outstanding from time to time.

Section 2.06. Interest and other charges shall be payable semi-annually on March 1 and September 1 in each year.

Section 2.07. The Borrower shall repay the principal of the Loan in accordance with the amortization schedule set forth in Schedule 1¹ to this Loan Agreement.

Article III

USE OF PROCEEDS OF THE LOAN

Section 3.01. The Borrower shall apply the proceeds of the Loan exclusively to financing the cost of goods required to carry out the Project described in Schedule 2 to this Loan Agreement. The specific goods to be financed out of the proceeds of the Loan shall be determined by agreement between the Bank and the Borrower, subject to modification by further agreement between them.

Section 3.02. Except as the Bank and the Borrower shall otherwise agree, the Borrower shall cause all goods financed out of the proceeds of the Loan to be imported into the territories of the Guarantor and there to be used exclusively in the carrying out of the Project.

Article IV

BONDS

Section 4.01. The Borrower shall execute and deliver Bonds representing the principal amount of the Loan as provided in the Loan Regulations.

Section 4.02. The *Director Principal* of the Borrower and such other person or persons as the Borrower shall appoint in writing are designated as authorized representatives of the Borrower for the purposes of Section 6.12 (a) of the Loan Regulations.

Article V

PARTICULAR COVENANTS

Section 5.01. (a) The Borrower shall carry out the Project with due diligence and efficiency and in conformity with sound engineering and financial practices. For such purposes it shall employ contractors mutually satisfactory to the Bank and the Borrower upon terms and conditions satisfactory to the Bank.

¹ See p. 280 of this volume.

(b) The Borrower shall carry out its functions in accordance with sound management principles under the direction of a competent and experienced general superintendent mutually satisfactory to the Bank and the Borrower. The Borrower shall also employ a competent and experienced technical consultant or consultants mutually satisfactory to the Bank and the Borrower to advise in the carrying out of its highway construction program.

(c) The Borrower shall furnish to the Bank, promptly upon their preparation, the plans and specifications for the Project and any material modifications subsequently made therein.

(d) The Borrower shall maintain records adequate to identify the goods financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect in accordance with consistently maintained sound accounting practices the financial condition and operations of the Borrower; shall enable the Bank's representatives to inspect the Project, the goods and any relevant records and documents; and shall furnish to the Bank all such information as the Bank shall reasonably request concerning the expenditure of the proceeds of the Loan, the Project, the goods, and the financial condition and operations of the Borrower.

(e) The Borrower shall keep separate books and accounts for its highway activities. Except as the Bank shall otherwise agree, revenues and receipts allocated to the Borrower's highway activities shall not be used to defray the cost of any of its other activities.

Section 5.02. (a) The Bank and the Borrower shall co-operate fully to assure that the purposes of the Loan will be accomplished. To that end, each of them shall furnish to the other all such information as it shall reasonably request with regard to the general status of the Loan.

(b) The Bank and the Borrower shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Loan and the maintenance of the service thereof. The Borrower shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

Section 5.03. (a) Except as the Bank shall otherwise agree, the Borrower shall not incur any debt if, on the date such debt is to be incurred, the total debt of the Borrower to be outstanding, including such proposed debt, would exceed the equivalent of 8,000,000 sucres in currency of the Guarantor. For purposes of this Section :

(i) the term " debt " shall be deemed to mean all indebtedness of the Borrower including loans or credits contracted for but not yet drawn down; provided, however, that the term shall not include the Loan or any loans or credits contracted on or before December 31, 1953;

(ii) debt shall be deemed to be incurred on the date on which a loan or credit is contracted;

(iii) the equivalent in currency of the Guarantor of amounts of debt payable in any other currency shall be determined on the basis of the rate of exchange,

on the date on which the Borrower incurs the additional debt, which is available to the Borrower for the purchase of such other currency or debt service.

(b) The Borrower undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Borrower as security for any debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds, and that in the creation of any such lien express provision will be made to that effect; provided, however, that the foregoing provisions of this subsection shall not apply (i) to any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; or (ii) to any lien created on revenues or receipts of the Borrower as security for the payment of indebtedness not exceeding at any one time the aggregate principal amount of 8,000,000 sucres incurred after December 31, 1953 in currency of the Guarantor in the ordinary course of the Borrower's business.

Section 5.04. Except as the Bank shall otherwise agree, the Borrower shall not undertake or execute any major project or development other than the Project unless prior to the time such project or development is undertaken or executed the Borrower shall have satisfied the Bank that it has on hand, or has made satisfactory arrangements to secure, the necessary funds to carry out such project or development. For purposes of this Section, a major project or development shall be deemed to be one the estimated cost of which is more than 15,000,000 sucres.

Section 5.05. The Borrower shall pay or cause to be paid all taxes or fees, if any, imposed under the laws of the Guarantor or laws in effect in the territories of the Guarantor or laws in effect in the territories of the Guarantor on or in connection with the execution, issue, delivery or registration of this Agreement, the Guarantee Agreement or the Bonds, or the payment of principal, interest or other charges thereunder; provided, however, that the provisions of this Section shall not apply to taxation of, or fees upon payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of the Guarantor.

Section 5.06. The Borrower shall pay or cause to be paid all taxes and fees, if any, imposed under the laws of the country or countries in whose currency the Loan and the Bonds are payable or laws in effect in the territories of such country or countries on or in connection with the execution, issue, delivery or registration of this Agreement, the Guarantee Agreement or the Bonds.

Section 5.07. Except as shall be otherwise agreed between the Bank and the Borrower, the Borrower shall insure or cause to be insured the goods financed with the proceeds of the Loan against risks incident to their purchase and importation into the territories of the Guarantor. Each contract of insurance shall be for such amounts and on such terms as shall be consistent with sound commercial practice and shall be payable in dollars or in the currency in which the cost of the goods insured thereunder shall be payable.

Section 5.08. (a) The Borrower shall cause all its machinery and equipment for highway maintenance and construction to be adequately maintained and repaired, and shall cause suitable workshops to be maintained in suitable places for that purpose.

(b) The Borrower shall cause the roads constructed with the proceeds of the Loan to be adequately maintained and shall cause all necessary repairs thereof to be made, all in accordance with sound engineering practices.

Article VI

REMEDIES OF THE BANK

Section 6.01. (i) If any event specified in paragraph (a), paragraph (b), paragraph (e) or paragraph (f) of Section 5.02 of the Loan Regulations shall occur and shall continue for a period of thirty days, or (ii) if any event specified in paragraph (c) of Section 5.02 of the Loan Regulations shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Bank to the Borrower, then at any subsequent time during the continuance thereof, the Bank, at its option, may declare the principal of the Loan and of all the Bonds then outstanding to be due and payable immediately, and upon any such declaration such principal shall become due and payable immediately, anything in this Loan Agreement or in the Bonds to the contrary notwithstanding.

Article VII

EFFECTIVE DATE; TERMINATION

Section 7.01. The following events are specified as additional conditions to the effectiveness of this Loan Agreement within the meaning of Section 9.01 (c) of the Loan Regulations :

(a) The Borrower shall have made arrangements satisfactory to the Bank for compliance with the provisions of subsections (a) and (b) of Section 5.01 of this Agreement;

(b) The Guarantor shall have furnished to the Bank evidence satisfactory to the Bank that the provisions of Section 3.01 of the Guarantee Agreement are valid and binding obligations of Banco Central del Ecuador;

(c) The Guarantor shall have furnished to the Bank evidence satisfactory to the Bank that after the date of this Agreement and prior to the Effective Date Banco Central del Ecuador shall have taken no action which would have constituted a violation of the provisions of Section 3.01 of the Guarantee Agreement had such agreement been effective on the date such action was taken.

Section 7.02. The following is specified as an additional matter, within the meaning of Section 9.02 (d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to the Bank : That the provisions of Section 3.01 of the Guarantee Agreement constitute a valid and binding obligation of Banco Central del Ecuador in accordance with their terms.

Section 7.03. A date 60 days after the date of this Loan Agreement is hereby specified for the purposes of Section 9.04 of the Loan Regulations.

Article VIII

MISCELLANEOUS

Section 8.01. The Closing Date shall be December 31, 1957.

Section 8.02. The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations :

For the Borrower :

Comité Ejecutivo de Vialidad de la Provincia del Guayas, Guayaquil, Ecuador.

For the Bank :

International Bank for Reconstruction and Development, 1818 H Street, N.W., Washington 25, D.C., United States of America.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names and delivered in the District of Columbia, United States of America, as of the day and year first above written.

International Bank for Reconstruction and Development :

By R. L. GARNER
Vice-President

Comité Ejecutivo de Vialidad de la Provincia del Guayas :

By Antonio MATA M.
Authorized Representative

SCHEDULE 1

AMORTIZATION SCHEDULE

<i>Date Payment Due</i>	<i>Payment of Principal (expressed in dollars)*</i>	<i>Principal Amount Outstanding After Each Payment (expressed in dollars)*</i>	<i>Date Payment Due</i>	<i>Payment of Principal (expressed in dollars)*</i>	<i>Principal Amount Outstanding After Each Payment (expressed in dollars)*</i>
September 1, 1957	—	\$8,500,000	March 1, 1961	651,000	4,238,000
March 1, 1958	\$568,000	7,932,000	September 1, 1961	667,000	3,571,000
September 1, 1958	581,000	7,351,000	March 1, 1962	682,000	2,889,000
March 1, 1959	595,000	6,756,000	September 1, 1962	698,000	2,191,000
September 1, 1959	608,000	6,148,000	March 1, 1963	714,000	1,477,000
March 1, 1960	622,000	5,526,000	September 1, 1963	730,000	747,000
September 1, 1960	637,000	4,889,000	March 1, 1964	747,000	—

* To the extent that any part of the Loan is repayable in a currency other than dollars (see Loan Regulations, Section 3.02), the figures in these columns represent dollar equivalents determined as for purposes of withdrawal.

PREMIUMS ON PREPAYMENT AND REDEMPTION

The following percentages are specified as the premiums payable on repayment in advance of maturity of any part of the principal amount of the Loan pursuant to Section 2.05 (b) of the Loan Regulations or on the redemption of any Bond prior to its maturity pursuant to Section 6.16 of the Loan Regulations :

<i>Time of Prepayment or Redemption</i>	<i>Premium</i>
Not more than 1 year before maturity	1/2%
More than 1 year and not more than 3 years before maturity	3/4%
More than 3 years and not more than 5 years before maturity	1%
More than 5 years and not more than 7 years before maturity	1 1/2%
More than 7 years before maturity	2%

International Bank for Reconstruction and Development :

By R. L. GARNER
Vice-President

Comité Ejecutivo de Vialidad de la Provincia del Guayas :

By Antonio MATA M.
Authorized Representative

SCHEDULE 2

DESCRIPTION OF THE PROJECT

1. Approximately 586 kilometers of paved all-weather roads are to be constructed in the Province of Guayas and adjoining provinces. The specific works to be carried out are as follows :

	<i>Approximate Length of Road in Kilometers</i>
Guayaquil-Balzar-Empalme	155.0
Duran-Yaguachi-Babahoyo	58.0
Chilcales-Bucay	38.0
Nobol-Jipijapa-Portoviejo	144.0
Palestina-Los Rios Province boundary	14.0
Ferry Installations-Guayas Rio	3.0
Guayaquil-Progreso	66.0
Boliche-El Oro Highway	100.0
Airport-Highway No. 7, km. 8	8.0
	586.0

The roads will be constructed with an adequate, stabilized base and will be surfaced with a three-course asphalt pavement having a minimum width of 6.5 meters. Adequate drainage, culverts and bridges will be provided.

2. Suitable shops and facilities will be established and maintained for the repair and servicing of equipment for highway maintenance and construction. A training program will be inaugurated and maintained to train personnel to operate, service and repair such equipment.

3. Suitable ferryboats will be acquired and put into operation between Guayaquil and Duran.

International Bank for Reconstruction and Development :
By R. L. GARNER
Vice-President

Comité Ejecutivo de Vialidad de la Provincia del Guayas :
By Antonio MATA M.
Authorized Representative

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

LOAN REGULATIONS No. 4, DATED 15 OCTOBER 1952

REGULATIONS APPLICABLE TO LOANS MADE BY THE BANK TO BORROWERS OTHER THAN
MEMBER GOVERNMENTS

[*Not published herein. See United Nations, Treaty Series, Vol. 172, p. 124*]