

No. 4168

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
and
MEXICO

Guarantee Agreement—*Pacific Railway Project* (with annexed Loan Regulations No. 4 and Loan Agreement—*Pacific Railway Project*—between the Bank and Ferrocarril del Pacífico, Sociedad Anónima de Capital Variable). Signed at Washington, on 24 August 1954

Official text: English.

Registered by the International Bank for Reconstruction and Development on 6 February 1958.

BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
MEXIQUE

Contrat de garantie — *Projet relatif au chemin de fer du Pacifique* (avec, en annexe, le Règlement n° 4 sur les emprunts et le Contrat d'emprunt — *Projet relatif au chemin de fer du Pacifique* — entre la Banque et le Ferrocarril del Pacífico, société anonyme à capital variable). Signé à Washington, le 24 août 1954

Texte officiel anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 6 février 1958.

No. 4168. GUARANTEE AGREEMENT¹ (*PACIFIC RAILWAY PROJECT*) BETWEEN THE UNITED MEXICAN STATES AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 24 AUGUST 1954

AGREEMENT, dated August 24, 1954, between UNITED MEXICAN STATES (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 Ferrocarril del Pacífico, Sociedad Anónima de Capital Variable (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 sixty-one million dollars (\$61,000,000), 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 the obligations of the Borrower in respect thereof; 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 and the obligations of the Borrower in respect thereof;

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, 1952,³ subject, however, to the modifications thereof set forth in Schedule 3³ to the Loan Agreement (said Loan Regulations No. 4 as so modified being hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

¹ Came into force on 28 December 1954, upon notification by the Bank to the Government of Mexico.

² See p. 220 of this volume.

³ See p. 232 of this volume.

Section 1.02. Wherever used in this Agreement the term "Financiera" means Nacional Financiera, S.A.

Article II

Section 2.01. Without limitation or restriction upon any of the other covenants on its part in this Agreement contained, the Guarantor 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, and the punctual performance of all the covenants and agreements of the Borrower, all as set forth in the Loan Agreement and in the Bonds.

Section 2.02. Without limitation or restriction upon the provisions of Section 2.01 of this Agreement, 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. The Guarantor undertakes that, except as the Bank shall otherwise agree, it will not cause or permit to be created any lien on any assets of the Guarantor or of any of its political subdivisions or of any agency of the Guarantor or of any such political subdivision as security for any external debt unless the payment of the principal of, and interest and other charges on, the Loan and the Bonds, shall be secured by such lien equally and ratably with such other external debt; provided, however, that the foregoing provisions of this Section shall not apply to: (a) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; (b) to any pledge of commercial goods to secure debt maturing by its terms not more than one year after the date on which it is incurred and to be paid out of the proceeds of sale of such commercial goods; or (c) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

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 Guarantor covenants that it will from time to time grant or cause to be granted rates to the Borrower which will maintain the rate structure of the Borrower at a level which will over a reasonable period produce gross revenues sufficient to cover the following costs, charges, payments and provisions of the Borrower : (a) costs of the Project not financed by the Loan ; (b) operating costs ; (c) adequate maintenance costs ; (d) taxes ; (e) payment of service on all outstanding debt ; (f) payment of the guaranteed dividend on Class A shares ; and (g) adequate working capital. During an initial period of two years or such other initial period as may be agreed upon between the Guarantor and the Bank the rate structure of the Borrower may be maintained at a lower level provided that such rate structure at such lower level is satisfactory to the Guarantor and the Bank.

Section 3.04. The Guarantor covenants that it will continue to permit the proceeds of the ten percent tax on freight charges and passenger fares (*Impuesto del 10 % sobre fletes y pasajes*) applicable to such charges and fares of the Borrower to be retained by the Borrower as normal income.

Section 3.05. 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 3.06. This 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 3.07. 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. Financiera and such person or persons as it 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 :

United Mexican States
c/o Nacional Financiera, S.A.
Avenida Venustiano Carranza 25
Mexico, D.F., Mexico

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. Financiera is designated for the purposes of Section 8.03 of the Loan Regulations.

IN WITNESS WHEREOF, the parties hereto, 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.

United Mexican States :
by Raúl MARTINEZ OSTOS
Authorized Representative

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

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.*]

LOAN AGREEMENT

(PACIFIC RAILWAY PROJECT)

AGREEMENT, dated August 24, 1954, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and FERROCARRIL DEL PACÍFICO, SOCIEDAD ANÓNIMA DE CAPITAL VARIABLE (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, 1952,¹ subject, however, to the modifications thereof set forth in Schedule 3² to this Agreement (said Loan Regulations No. 4 as so modified being 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 Agreement set forth or referred to, an amount in various currencies equivalent to sixty-one million dollars (\$61,000,000).

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, provided, however, that the Borrower shall not be entitled to withdraw from the Loan Account until a schedule of rates conforming to the provisions of Section 3.03 of the Guarantee Agreement shall have been granted.

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.

¹ See above.

² See p. 232 of this volume.

The date specified for the purposes of Section 2.02 of the Loan Regulations is a date 60 days after the date of this Loan 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.

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 June 1 and December 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 I¹ to this 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 2¹ to this 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. 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

THE 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 General Manager of the Borrower and such person or persons as he shall appoint in writing are designated as authorized representatives of the Borrower for the purposes of Section 6.12 (a) of the Loan Regulations.

¹ See p. 230 of this volume

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, operating and business practices.

(b) 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.

(c) 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.

Section 5.02. (a) The Bank and the Borrower 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.

(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. Except as the Bank and the Borrower shall otherwise agree, the Borrower shall not incur, assume or guarantee any debt, or substantially modify the terms of payment of any existing debt incurred, assumed or guaranteed by it; provided, however, that the foregoing provisions of this Section shall not apply to the incurring by the Borrower in the ordinary course of its business of any debt maturing by its terms not more than one year after its date.

Section 5.04. 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 Section shall not apply 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.

Section 5.05. Except as the Bank and the Borrower shall otherwise agree, the Borrower shall not declare or pay any dividend on any shares of its capital stock now out-

standing or hereafter issued ; provided, however, that this Section shall not apply to the declaration or payment of dividends on any Class A shares now outstanding.

Section 5.06. The Borrower shall as soon as possible make surveys and studies and take all other steps necessary or desirable to obtain rates conforming to the provisions of Section 3.03 of the Guarantee Agreement ¹ and shall thereafter from time to time make surveys and studies and take all other steps necessary or desirable to obtain such adjustments to its rates as will maintain its rate structure at a level conforming to the provisions of Section 3.03 of the Guarantee Agreement.

Section 5.07. The Borrower shall retain for such period as the Bank shall require, consultants, satisfactory to the Bank, to advise and assist the Borrower in the execution of the Project and in improving operating and administrative practices.

Section 5.08. The Borrower shall at all times maintain its corporate existence and right to carry on operations and shall, except as the Bank shall otherwise agree, maintain and renew all rights, powers, privileges and franchises owned by it and necessary or useful in the conduct of its business.

Section 5.09. Except as the Bank shall otherwise agree, the Borrower shall not sell or otherwise dispose of all or a substantial part of its property and assets.

Section 5.10. 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 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 5.11. 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 5.12. 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. Such insurance 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.

¹ See p. 212 of this volume.

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 Agreement or in the Bonds to the contrary notwithstanding.

Article VII

MISCELLANEOUS

Section 7.01. The Closing Date shall be December 31, 1958.

Section 7.02. A date 90 days after the date of this Agreement is hereby specified for the purposes of Section 9.04 of the Loan Regulations.

Section 7.03. The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations :

For the Borrower :

Ferrocarril del Pacífico, S.A. de C.V.
Avenida Colón 258,
Guadalajara, Jalisco
Mexico

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-Président

Ferrocarril del Pacífico, S.A. de C.V.:

by B. MENDEZ
General Manager

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>
December 1, 1958	—	\$61,000,000	December 1, 1964	\$3,031,000	\$37,120,000
June 1, 1959	\$1,210,000	59,790,000	June 1, 1965	3,031,000	34,089,000
December 1, 1959	1,210,000	58,580,000	December 1, 1965	3,031,000	31,058,000
June 1, 1960	1,556,000	57,024,000	June 1, 1966	3,531,000	27,527,000
December 1, 1960	1,556,000	55,468,000	December 1, 1966	3,531,000	23,996,000
June 1, 1961	1,556,000	53,912,000	June 1, 1967	3,531,000	20,465,000
December 1, 1961	1,556,000	52,356,000	December 1, 1967	3,531,000	16,934,000
June 1, 1962	1,556,000	50,800,000	June 1, 1968	4,231,000	12,703,000
December 1, 1962	1,556,000	49,244,000	December 1, 1968	4,231,000	8,472,000
June 1, 1963	3,031,000	46,213,000	June 1, 1969	4,236,000	4,236,000
December 1, 1963	3,031,000	43,182,000	December 1, 1969	4,236,000	—
June 1, 1964	3,031,000	40,151,000			

* 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 5 years before maturity	½%
More than 5 years but not more than 10 years before maturity	1%
More than 10 years before maturity	2%

SCHEDULE 2

DESCRIPTION OF THE PROJECT

The Project is a program for the complete rehabilitation of the physical properties and the improvement of the management and administration of the Borrower. The program includes the following :

PART I. *The Reconstruction of the Roadway.* This includes the following works and measures :

- (a) The replacement of all light rails with heavier rails. Rails will be so replaced on approximately 1,600 kilometers of track.
- (b) The replacement of all deficient ties with new ties.

- (c) The ballasting of the track wherever existing ballast is deficient, and the grading of all embankments to bring them up to adequate widths.
- (d) The rehabilitation and repair of all defective bridges.
- (e) The rebuilding and modernization of the communications system.
- (f) The acquisition of mechanical equipment for trackwork.

PART II. *The Acquisition, Repair and Maintenance of Operating Equipment.* This includes the following measures :

- (a) A total of 64 diesel-electric locomotives, 33 of approximately 1,600 horsepower and 31 of approximately 900 horsepower will be acquired and placed in operation. A suitable supply of spare parts will be maintained.
- (b) Adequate facilities will be provided for the heavy repairs, inspection, maintenance and fueling of the diesel-electric locomotives.
- (c) A total of approximately 1,800 freight cars have been or will be acquired and placed into operation.
- (d) A total of approximately 800 existing freight cars will be completely repaired. Suitable facilities for these repairs will be provided at Empalme, Mazatlan and Guadalajara.

PART III. *Improvement of Management and Administration.* The Borrower has adopted or will adopt and will continue in force such measures as shall be agreed upon between the Bank and the Borrower for the strengthening of its management and administration, the improvement of its operating procedures and practices and the efficient and economic conduct of its operations.

SCHEDULE 3

MODIFICATIONS OF LOAN REGULATIONS No. 4

For the purposes of this Agreement the provisions of Loan Regulations No. 4 of the Bank, dated October 15, 1952, shall be deemed to be modified as follows :

(a) Paragraph (i) of Section 5.02 of Loan Regulations No. 4 shall be deemed to read as follows :

“(i) After the date of the Loan Agreement and prior to the Effective Date any action shall have been taken which would have constituted a violation of any covenant contained in the Loan Agreement or Guarantee Agreement relating to the creation of liens as security for debt if the Loan Agreement and Guarantee Agreement had been effective on the date such action was taken.”

(b) Paragraph (i) of Section 7.04 of Loan Regulations No. 4 shall be deemed to read as follows :

“(i) The parties shall fix the amount of the remuneration of the arbitrators and such other persons as shall be required for the conduct of the arbitration proceeding. If the parties shall not agree on such amount before the Arbitral Tribunal shall convene, the Arbitral Tribunal shall fix such amount as shall be reasonable under the circumstances. The Bank, the Borrower and the Guarantor shall each defray its own expenses in the arbitration proceedings. The costs of the Arbitral Tribunal

shall be divided and borne equally between the Bank on the one side and the Borrower and Guarantor on the other. Any question concerning the division of the costs of the Arbitral Tribunal or the procedure for payment of such costs shall be determined by the Arbitral Tribunal."

(c) Section 9.01 of Loan Regulations No. 4 shall be deemed to read as follows :

"SECTION 9.01. *Conditions Precedent to Effectiveness of Loan Agreement and Guarantee Agreement.* The Loan Agreement and Guarantee Agreement shall not become effective until :

"(a) the Borrower has notified the Bank that (i) the execution and delivery of the Loan Agreement on behalf of the Borrower have been duly authorized or ratified by all necessary corporate and governmental action, and (ii) all other events specified in the Loan Agreement as conditions to its effectiveness have occurred ;

"(b) the Guarantor has notified the Bank that (i) the execution and delivery of the Guarantee Agreement on behalf of the Guarantor have been duly authorized or ratified by all necessary governmental action, and (ii) all other events relating to the Guarantor and specified in the Loan Agreement as conditions to its effectiveness have occurred ;

"(c) the Borrower and the Guarantor have furnished to the Bank evidence thereof satisfactory to the Bank ; and

"(d) the Bank has given the notifications provided for in Section 9.03 of these Regulations."