

No. 4676

**INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
and
UNION OF SOUTH AFRICA**

**Loan Agreement—*Fifth Transport Project* (with annexed
Loan Regulations No. 3). Signed at New York, on
2 December 1958**

Official text: English.

*Registered by the International Bank for Reconstruction and Development on
17 February 1959.*

**BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
UNION SUD-AFRICAINE**

**Contrat d'emprunt — *Cinquième projet relatif aux trans-
ports* (avec, en annexe, le Règlement n° 3 sur les em-
prunts). Signé à New-York, le 2 décembre 1958**

Texte officiel anglais.

*Enregistré par la Banque internationale pour la reconstruction et le développement
le 17 février 1959.*

No. 4676. LOAN AGREEMENT¹ (*FIFTH TRANSPORT PROJECT*) BETWEEN THE UNION OF SOUTH AFRICA AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT NEW YORK, ON 2 DECEMBER 1958

AGREEMENT dated December 2, 1958, between THE UNION OF SOUTH AFRICA (hereinafter called the Borrower) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS the Borrower has been engaged for a number of years in carrying out a continuing program for the modernization and expansion of its railway, harbor and road transport facilities;

WHEREAS the Bank has from time to time granted loans to the Borrower for the purposes of such program, the last such loan having been made, upon the terms and conditions of a loan agreement between the Borrower and the Bank dated October 1, 1957,² to assist the Borrower in financing such program for the three-year period ending March 31, 1960;

WHEREAS the Borrower, having deemed it necessary to accelerate the carrying out of such program, now intends to incur additional expenditures thereon during the balance of such period and has requested a further loan from the Bank;

WHEREAS concurrently with the raising of such loan the Borrower intends to raise additional funds for its general capital requirements by selling an issue of its bonds in the aggregate principal amount of \$25,000,000 in the markets of the United States of America (hereinafter called the Public Bond Issue); and

WHEREAS the Bank has agreed to grant a loan to the Borrower upon the terms and conditions hereinafter provided;

NOW THEREFORE it is hereby agreed as follows :

Article I

LOAN REGULATIONS; SPECIAL DEFINITION

Section 1.01. The parties to this Loan Agreement accept all the provisions of Loan Regulations No. 3 of the Bank dated June 15, 1956,³ subject, however, to the modifications thereof set forth in Schedule 3⁴ to this Agreement (said Loan Regulations No. 3 as so modified being hereinafter called the Loan Regula-

¹ Came into force on 12 December 1958, upon notification by the Bank to the Government of the Union of South Africa.

² United Nations, *Treaty Series*, Vol. 280, p. 285.

³ See p. 22 of this volume.

⁴ See p. 20 of this volume.

tions), with the same force and effect as if they were fully set forth herein.

Section 1.02. For the purposes of this Agreement, any reference in the Loan Agreement or in the Loan Regulations (including any Schedules thereto) to the "territories" of the Borrower shall be construed to include a reference to any territory administered by the Borrower.

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 twenty-five million dollars (\$25,000,000).

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.

Section 2.03. The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths 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. Such commitment charge shall accrue from a date sixty days after the date of this Agreement to the respective dates on which amounts shall be withdrawn by the Borrower from the Loan Account as provided in Article IV of the Loan Regulations or shall be cancelled pursuant to Article V of the Loan Regulations.

Section 2.04. The Borrower shall pay interest at the rate of five and three-fourths per cent ($5\frac{3}{4}\%$) per annum on the principal amount of the Loan so withdrawn and outstanding from time to time.

Section 2.05. Except as the Borrower and the Bank 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 1¹ to this Agreement.

¹ See p. 18 of this volume.

Article III

USE OF PROCEEDS OF THE LOAN

Section 3.01. The Borrower shall cause the proceeds of the Loan to be applied 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 Borrower and the Bank, 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 used in the territories of the Borrower 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 Minister of Finance 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 of the Loan Regulations.

Article V

PARTICULAR COVENANTS

Section 5.01. (a) The Borrower shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound engineering and financial practices.

(b) The Borrower shall maintain or cause to be maintained 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 operations and financial condition of the South African Railways and Harbours Administration; shall enable the Bank's representatives to inspect the Project, the goods and any relevant records and documents and the equipment and properties operated by, and the operations of, the South African Railways and Harbours Administration; and shall furnish to the Bank all such information as the Bank shall reasonably request concerning the expendi-

¹ See p. 18 of this volume.

ture of the proceeds of the Loan, the Project, the goods, and the operations and financial condition of the South African Railways and Harbours Administration.

(c) The Borrower shall maintain or cause to be maintained the plant, equipment and other property owned by it and operated by the South African Railways and Harbours Administration and shall make or cause to be made all necessary renewals and repairs thereof, all in accordance with sound engineering practices; and shall at all times operate or cause to be operated such plant, equipment and property in accordance with sound business practices.

Section 5.02. (a) The Borrower 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 Borrower, such information shall include information with respect to financial and economic conditions in the territories of the Borrower and the international balance of payments position of the Borrower.

(b) The Borrower 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 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.

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

Section 5.03. It is the mutual intention of the Borrower and the Bank that no other external debt shall enjoy any priority over the Loan by way of a lien on public assets. To that end, 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 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, provided, however, that 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; or (iii) any lien created by the South African Reserve Bank on any of its assets in the ordinary course

of its banking business to secure a debt maturing not more than one year after the date on which it is originally incurred.

The term "assets of the Borrower" as used in this Section includes assets of the Borrower or of any of its Provinces or other political subdivisions or of any agency of the Borrower or of any such Provinces or other political subdivisions, including assets of the South African Reserve Bank and of local governing authorities.

Section 5.04. 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 Borrower 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 Borrower.

Section 5.05. The Loan Agreement and the Bonds shall be free from any taxes or fees that shall be imposed under the laws of the Borrower or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof and the Borrower shall pay all such 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.

Section 5.06. 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 Borrower or laws in effect in its territories.

Section 5.07. The Borrower shall satisfy the Bank that adequate arrangements have been made to insure the goods financed out of the proceeds of the Loan against risks incident to their purchase and importation into the territories of the Borrower.

Article VI

REMEDIES OF THE BANK

Section 6.01. (i) If any event specified in paragraph (a) or paragraph (b) 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.

Section 6.02. The following are specified as additional events for the purposes of Section 5.02 (h) of the Loan Regulations :

- (i) Any event specified in paragraph (3) of Section 5.02 of Loan Regulations No. 3 of the Bank dated August 15, 1950,¹ with reference to the Loan Agreement dated January 23, 1951,² between the Borrower and the Bank shall have occurred;
- (ii) Any event specified in paragraph (c) of Section 5.02 of Loan Regulations No. 3 of the Bank dated October 15, 1952,³ with reference to the Loan Agreement dated August 28, 1953,⁴ between the Borrower and the Bank shall have occurred;
- (iii) Any event specified in paragraph (c) of Section 5.02 of Loan Regulations No. 3 of the Bank dated February 15, 1955,⁵ with reference to the Loan Agreement dated November 28, 1955,⁶ between the Borrower and the Bank shall have occurred.

Article VII

EFFECTIVE DATE; TERMINATION

Section 7.01. The following event is specified as an additional condition to the effectiveness of this Agreement within the meaning of Section 9.01 (b) of the Loan Regulations, namely, that the Borrower shall have duly delivered and received payment for the \$25,000,000 aggregate principal amount of bonds of the Public Bond Issue.

Section 7.02. A date 60 days after the date of this 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 September 30, 1960.

¹ United Nations, *Treaty Series*, Vol. 156, p. 158.

² United Nations, *Treaty Series*, Vol. 158, p. 115.

³ United Nations, *Treaty Series*, Vol. 165, p. 252.

⁴ United Nations, *Treaty Series*, Vol. 180, p. 73.

⁵ United Nations, *Treaty Series*, Vol. 211, p. 172.

⁶ United Nations, *Treaty Series*, Vol. 230, p. 101.

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

For the Borrower :

Secretary to the Treasury,
Union Buildings
Pretoria
Union of South Africa

Alternative address for cablegrams and radiograms :

Findep,
Pretoria
South Africa

For the Bank :

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

Alternative address for cablegrams and radiograms :

Intbafrad
Washington, D. C.

Section 8.03. The Minister of Finance of the Borrower is designated for the purposes of Section 8.03 of the Loan Regulations.

Section 8.04. In this Agreement any reference to the Minister of Finance of the Borrower shall include a reference to any Minister of State of the Borrower for the time being acting for or on behalf of the Minister of Finance of the Borrower.

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 City of New York, State of New York, United States of America, as of the day and year first above written.

The Union of South Africa :

By W. C. DU PLESSIS
Authorized Representative

International Bank for Reconstruction and Development :

By Eugene R. BLACK
President

SCHEDULE 1

AMORTIZATION SCHEDULE

<i>Date Payment Due</i>	<i>Payment of Principal (expressed in dollars)*</i>	<i>Date Payment Due</i>	<i>Payment of Principal (expressed in dollars)*</i>
June 1, 1961	\$1,253,000	June 1, 1965	\$1,571,000
December 1, 1961	1,289,000	December 1, 1965	1,616,000
June 1, 1962	1,326,000	June 1, 1966	1,663,000
December 1, 1962	1,364,000	December 1, 1966	1,711,000
June 1, 1963	1,403,000	June 1, 1967	1,760,000
December 1, 1963	1,443,000	December 1, 1967	1,811,000
June 1, 1964	1,485,000	June 1, 1968	1,862,000
December 1, 1964	1,527,000	December 1, 1968	1,916,000

* 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 this column represent dollar equivalents determined as for purposes of withdrawal.

PREMIUM 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 2 years before maturity	½%
More than 2 years but not more than 4 years before maturity	2%
More than 4 years but not more than 6 years before maturity	3½%
More than 6 years but not more than 8 years before maturity	4¾%
More than 8 years before maturity	5¾%

SCHEDULE 2

DESCRIPTION OF THE PROJECT

The Project is (a) the part of the development program of the South African Railways and Harbours Administration relating to its railway, harbor and road transport facilities for the two-year period ending March 31, 1960; and (b) the completion to a state of practical usefulness within a reasonable time after March 31, 1960, of such components of the part of the program described in clause (a) as are scheduled to be still in progress at that date.

The program is designed to increase the capacity of and modernize the transport facilities owned by the Borrower and operated by the South African Railways and Harbours Administration by modernizing, improving and adding to the existing facilities, with special emphasis on the increase of line and yard capacity, the expansion of motive

power and rolling stock, the extension of modernized signalling and traffic control facilities, and the continued improvement and expansion of workshop facilities.

The part of the program described in clause (a) above presently contemplates expenditure by the Borrower of the equivalent of approximately 177 million South African pounds between April 1, 1958 and March 31, 1960. The main components of this part include :

- (i) the construction of new suburban, avoiding and branch lines;
- (ii) the strengthening and improvement of the existing permanent way by the construction of deviations and by regrading; by the replacement and strengthening of bridges; and by relaying with heavier rails;
- (iii) the provision of additional tracks on various sections, and of new or enlarged marshalling yards and goods yards;
- (iv) the extension and improvement of electrified sections;
- (v) the acquisition and construction of steam locomotives, electric locomotive units, diesel locomotives, diesel rail-car sets, electric motor coaches, trailers, and goods wagons and other rolling stock, and spare parts for all of the foregoing;
- (vi) the modernization and expansion of manufacturing and repair facilities by the construction and enlargement of mechanical workshops and running sheds and the acquisition and installation of machinery and equipment therefor;
- (vii) the improvement and installation of signalling and interlocking equipment, telegraph and telephone systems, electric power distribution, water supplies and other railway facilities;
- (viii) the construction and remodelling of station buildings and layouts, goods sheds, staff quarters, office buildings and other necessary buildings;
- (ix) the extension of harbor facilities and the acquisition and improvement of fixed and floating harbor equipment, pre-cooling plant and equipment required for construction work at the harbors.

SCHEDULE 3

MODIFICATIONS OF LOAN REGULATIONS NO. 3

For the purposes of this Agreement the provisions of Loan Regulations No. 3 of the Bank, dated June 15, 1956, shall be deemed to be modified as follows :

(a) Section 2.02 is deleted.

(b) Paragraph (c) of Section 5.02 is amended to read as follows :

“(c) A default shall have occurred in the performance of any other covenant or agreement on the part of the Borrower under the Loan Agreement or the Bonds,

or under the loan agreement between the Borrower and the Bank dated October 1, 1957, or the bonds issuable thereunder.”

(c) The eighth paragraph of the Form of Bond set forth in Schedule 1 and the seventh paragraph of the Form of Bond set forth in Schedule 2 are amended by inserting, after the word “territories” in each such paragraph, the following: “(including territories administered by it)”.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

LOAN REGULATIONS No. 3, DATED 15 JUNE 1956

REGULATIONS APPLICABLE TO LOANS MADE BY THE BANK TO MEMBER GOVERNMENTS

[*Not published herein. See United Nations, Treaty Series, Vol. 280, p. 302.*]