

No. 6776

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

Guarantee Agreement—*Apapa Wharf Project* (with related letter, annexed Loan Regulations No. 4 and Loan Agreement between the Bank and the Nigerian Ports Authority). Signed at Washington, on 10 December 1962

Official text: English.

Registered by the International Bank for Reconstruction and Development on 12 June 1963.

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

Contrat de garantie — *Projet relatif au quai d'Apapa* (avec lettre connexe et, en annexe, le Règlement n° 4 sur les emprunts et le Contrat d'emprunt entre la Banque et la Nigerian Ports Authority). Signé à Washington, le 10 décembre 1962

Texte officiel anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 12 juin 1963.

No. 6776. GUARANTEE AGREEMENT¹ (*APAPA WHARF PROJECT*) BETWEEN THE FEDERATION OF NIGERIA AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 10 DECEMBER 1962

AGREEMENT, dated December 10, 1962, between FEDERATION OF NIGERIA (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 Nigerian Ports Authority (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 equivalent to thirteen million five hundred thousand dollars (\$13,500,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee the obligations of the Borrower in respect of such loan as hereinafter provided; and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed so to guarantee such obligations of the Borrower;

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 February 15, 1961² (said Loan Regulations No. 4 being 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 Agreement contained, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due

¹ Came into force on 18 February 1963, upon notification by the Bank to the Government of Nigeria.

² See p. 264 of this volume.

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. It is the mutual intention of the Guarantor 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 Guarantor undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Guarantor 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 provisions 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 arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

The term " assets of the Guarantor " as used in this Section includes assets of the Guarantor or of any of its political subdivisions or of any agency of the Guarantor or of any such political subdivision, including, without limitation, the Central Bank of Nigeria or any other institution performing the functions of a central bank.

Section 3.02. (a) The Guarantor and the Bank 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 either 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 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 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 Agreement, the Loan Agreement and the Bonds shall be free from any taxes 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 Minister of Finance of the Guarantor 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 :

Permanent Secretary
Ministry of Finance
Lagos, Nigeria

Alternative address for cablegrams and radiograms :

Secfinance
Lagos

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 5.02. The Minister of Finance of the Guarantor 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.

Federation of Nigeria :

By J. M. UDOCHI
Authorized Representative

International Bank for Reconstruction and Development :

By J. Burke KNAPP
Vice President

RELATED LETTER

FEDERAL MINISTRY OF FINANCE
LAGOS, NIGERIA

December 10, 1962

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

Dear Sirs :

Please refer to the Loan Agreement¹ (*Apapa Wharf Project*) between the Bank and the Nigerian Ports Authority, and to the Guarantee Agreement² (*Apapa Wharf Project*) between the Federation of Nigeria and the Bank, both of even date herewith, and to a letter from the Nigerian Ports Authority to the Bank³ also of even date herewith relating to Section 5.01 (a) of said Loan Agreement. A conformed copy of such letter is attached as an annex hereto.

The Federation is familiar with the contents of such letter of the Nigerian Ports Authority and confirms hereby its agreement with the principles and agreements set forth therein.

Very truly yours,

Federation of Nigeria :
By J. M. UDOCHI
Authorized Representative

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

LOAN REGULATIONS No. 4, DATED 15 FEBRUARY 1961

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

[*Not published herein. See United Nations, Treaty Series, Vol. 400, p. 212.*]

LOAN AGREEMENT
(*APAPA WHARF PROJECT*)

AGREEMENT, dated December 10, 1962, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and NIGERIAN PORTS AUTHORITY (hereinafter called the Borrower).

¹ See below

² See p. 256 of this volume.

³ See p. 278 of this volume.

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 February 15, 1961¹ (said Loan Regulations No. 4 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 thirteen million five hundred thousand dollars (\$13,500,000).

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 as set forth in, the Loan Agreement.

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.

Section 2.04. The Borrower shall pay interest at the rate of five and one-half per cent ($5\frac{1}{2}$ %) 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 February 1 and August 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 1² 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 2² to this Agreement. The specific goods to be financed out of the proceeds of the Loan and

¹ See p. 264 of this volume.

² See p. 276 of this volume.

the methods and procedures for procurement of such goods 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 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.

Article V

PARTICULAR COVENANTS

Section 5.01. (a) The Borrower shall carry out the Project and conduct all its operations with due diligence and efficiency and in conformity with sound engineering, financial and business practices.

(b) The Borrower shall furnish to the Bank, promptly upon their preparation, the plans and specifications and the construction schedules for the Project and any material modifications subsequently made therein, in such detail as the Bank shall request.

(c) The general design standards to be used for the Project shall be satisfactory to the Bank and the Borrower.

(d) Except as the Bank and the Borrower shall otherwise agree, the Project shall be carried out by contractors satisfactory to the Bank and the Borrower, employed under contracts satisfactory to the Bank and the Borrower.

(e) 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 operations and financial condition of the Borrower; shall enable the Bank's representatives to inspect its properties and operations including the sites, works and construction included in 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 operations and financial condition of the Borrower.

Section 5.02. The Borrower shall at all times operate, maintain and repair the Project in accordance with sound engineering and port practices.

Section 5.03. (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 shall be reasonably requested 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 5.04. 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: (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; or (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

Section 5.05. The Borrower shall pay or cause to be paid all taxes, 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 Agreement¹ 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 taxes on 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, 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. (a) The Borrower shall, except as the Bank shall otherwise agree, take all steps necessary to maintain and renew all rights, powers, privileges and franchises which are necessary or useful for the successful construction and operation of the Project.

¹ See p. 256 of this volume.

(b) The Borrower shall operate and maintain its equipment and property, and from time to time make all necessary renewals and repairs thereof, all in accordance with sound business and engineering practices.

Section 5.08. The Borrower shall make arrangements, satisfactory to the Bank, for the formulation and application of procedures to determine the cost of performing the principal operations and services of the Borrower.

Section 5.09. The Borrower shall, at a reasonable time prior to the appointment of a General Manager of the Borrower, notify the Bank of any proposal to make such appointment.

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 or if any event specified in Section 6.02 of this Agreement 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 is specified as an additional event for the purposes of Section 5.02 of the Loan Regulations :

The Ports Act (Chapter 155 of the Laws of the Federation of Nigeria and Lagos), as amended prior to the date of the Loan Agreement, shall have been suspended, terminated or repealed, or materially amended, without the prior agreement of the Bank.

Article VII

EFFECTIVE DATE; TERMINATION

Section 7.01. The following is specified as an additional matter, within the meaning of Section 9.02 (c) of the Loan Regulations, to be included in the opinion or opinions to be furnished to the Bank :

That the Borrower has full power and authority to construct and operate the Project and that, except as stated in such opinion, all acts, consents, sanctions and approvals necessary therefor have been fully and validly performed or given.

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, 1966 or such other date as shall be agreed by the Bank and the Borrower.

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

For the Borrower :

Nigerian Ports Authority
Private Mail Bag 12588
216 Broad Street
Lagos, Nigeria

Alternative address for cablegrams and radiograms :

Genports
Lagos

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.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be executed in their respective names, and to be 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 J. Burke KNAPP
Vice President

Nigerian Ports Authority :

By G. U. OHIKERE
Authorized Representative

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>
February 1, 1967	\$255,000	August 1, 1975	\$405,000
August 1, 1967	265,000	February 1, 1976	420,000
February 1, 1968	270,000	August 1, 1976	430,000
August 1, 1968	280,000	February 1, 1977	440,000
February 1, 1969	285,000	August 1, 1977	455,000
August 1, 1969	295,000	February 1, 1978	465,000
February 1, 1970	300,000	August 1, 1978	480,000
August 1, 1970	310,000	February 1, 1979	490,000
February 1, 1971	320,000	August 1, 1979	505,000
August 1, 1971	330,000	February 1, 1980	520,000
February 1, 1972	335,000	August 1, 1980	535,000
August 1, 1972	345,000	February 1, 1981	550,000
February 1, 1973	355,000	August 1, 1981	565,000
August 1, 1973	365,000	February 1, 1982	580,000
February 1, 1974	375,000	August 1, 1982	595,000
August 1, 1974	385,000	February 1, 1983	600,000
February 1, 1975	395,000		

* To the extent that any part of the Loan is repayable in a currency other than dollars (see Loan Regulations, Section 3.03), the figures in this column 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 three years before maturity	1/2%
More than three years but not more than six years before maturity	1 1/2%
More than six years but not more than eleven years before maturity	2 1/2%
More than eleven years but not more than sixteen years before maturity	3 1/2%
More than sixteen years but not more than eighteen years before maturity	4 1/2%
More than eighteen years before maturity	5 1/2%

SCHEDULE 2

DESCRIPTION OF PROJECT

The Project is part of the Borrower's six-year development program (1962-1968) and includes :

- (a) The extension of Apapa Wharf in the port of Lagos, including the construction of not less than 2,524 feet of quay wall to provide at least four new berths, reclamation and dredging, water and power facilities, railway and crane tracks and portal cranes, four transit sheds, two warehouses and cargo-handling equipment for operations of the new wharf extension.
- (b) The completion of two warehouses at Apapa Wharf together with mechanical cargo-handling equipment required for their operation.
- (c) A floating crane.
- (d) A fresh water delivery vessel.

LETTER RELATING TO THE LOAN AGREEMENT

NIGERIAN PORTS AUTHORITY
LAGOS

December 10, 1962

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

Dear Sirs :

Please refer to Section 5.01 (a) of the Loan Agreement (*Apapa Wharf Project*) between the Bank and the Nigerian Ports Authority of even date¹ herewith, which Section, among other things, obligates the Authority to conduct all its operations in conformity with sound financial practices.

During negotiations for the Loan made by the Bank to the Authority, we discussed in detail with the Bank the Authority's financial structure and prospects and agreed that among the important aspects of the Authority's financial practices was the maintenance at all times of a sound cash position.

In view of our mutual objective of maintaining a sound financial structure for the Authority and at your request, the Authority agrees that the terms and conditions of borrowing by the Authority for a project known as the Bonny Bar Dredging Project shall be satisfactory to the Authority and the Bank.

Please confirm your agreement with the foregoing by signing and returning the enclosed copy of this letter.

Very truly yours,

Nigerian Ports Authority :
By G. U. CHIKERE
Authorized Representative*Confirmed:*International Bank for
Reconstruction and Development :
By J. Burke KNAPP

¹ See p. 264 of this volume.