

No. 6938

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

**Guarantee Agreement—*Railway Rehabilitation Project*
(with annexed Loan Regulations No. 4 and Loan Agree-
ment between the Bank and The Peruvian Corporation
Limited). Signed at Washington, on 13 March 1963**

Official text: English.

*Registered by the International Bank for Reconstruction and Development on 24 Sep-
tember 1963.*

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

**Contrat de garantie — *Projet relatif à la réfection des
chemins de fer* (avec, en annexe, le Règlement n° 4 sur
les emprunts et le Contrat d'emprunt entre la Banque
et The Peruvian Corporation Limited). **Signé à
Washington, le 13 mars 1963****

Texte officiel anglais.

*Enregistré par la Banque internationale pour la reconstruction et le développement le
24 septembre 1963.*

No. 6938. GUARANTEE AGREEMENT¹ (*RAILWAY REHABILITATION PROJECT*) BETWEEN THE REPUBLIC OF PERU AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 13 MARCH 1963

AGREEMENT, dated March 13, 1963, between REPUBLIC OF PERU (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 The Peruvian Corporation Limited (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 two hundred and fifty thousand dollars (\$13,250,000), 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, 1961,³ subject, however, to the modifications thereof set forth in Schedule 3⁴ 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.

Section 1.02. Wherever used in this Guarantee Agreement, unless the context shall otherwise require, the terms which are defined in the Loan Agreement shall have the respective meanings therein set forth.

¹ Came into force on 26 August 1963, upon notification by the Bank to the Government of Peru.

² See p. 254 of this volume.

³ See p. 252 of this volume.

⁴ See p. 276 of this volume.

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 Notes, and the premium, if any, on the prepayment of the Loan or the redemption of the Notes, all as set forth in the Loan Agreement and in the Notes.

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 governmental 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 Notes, 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.

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 the Banco Central de Reserva del Perú.

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 Notes 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 Note to a holder thereof other than the Bank when such Note is beneficially owned by an individual or corporate resident of the Guarantor.

Section 3.04. This Agreement, the Loan Agreement, the Notes and the Mortgage 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 Notes shall be paid free from all restrictions imposed under the laws of the Guarantor or laws in effect in its territories.

Section 3.06. The Guarantor covenants that it will from time to time (a) grant and maintain, or allow to be granted and maintained, railway rates which will enable the Borrower to obtain gross revenues sufficient to cover, *inter alia* : (i) the costs of operation (including without limitation, wages, salaries, social benefits, supplies, maintenance and costs of administration) ; (ii) depreciation, and (iii) interest ; and (b) cause the agency or agencies of the Guarantor responsible for the fixing, adjustment and administration of such rates to effect, when necessary, but in any case at least once a year, a review of such rates in order to verify that such rates are adequate to meet these needs of the Borrower.

Section 3.07. The Guarantor covenants that it will not take or permit any of its political subdivisions or agencies to take any action which would prevent or interfere with the performance by the Borrower of its obligations contained in the Loan Agreement or in the Mortgage, and will take or cause to be taken all action necessary or appropriate to enable the Borrower to perform such obligations.

Article IV

Section 4.01. The Guarantor shall endorse, in accordance with the provisions of the Loan Regulations, its guarantee on the Notes to be executed and delivered by the Borrower. The Ministro de Hacienda y Comercio 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 :

Ministerio de Hacienda y Comercio
Lima, Peru

Alternative address for cablegrams and radiograms :

Minhacienda
Lima, Perú

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 Ministro de Hacienda y Comercio 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.

Republic of Peru :

By F. BERCKEMEYER
Authorized Representative

International Bank for Reconstruction and Development :

By George D. WOODS
President

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

LOAN REGULATIONS No. 4, DATED 15 FEBRUARY 1961

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

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

LOAN AGREEMENT

(RAILWAY REHABILITATION PROJECT)

AGREEMENT, dated March 13, 1963, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and THE PERUVIAN CORPORATION LIMITED, a company duly incorporated, registered and existing under the English Companies Act, 1890, domiciled in New York, New York, United States of America, and resident in Lima, Peru (hereinafter called the Borrower).

Article I

LOAN REGULATIONS ; SPECIAL DEFINITIONS

Section 1.01. The parties to this Loan Agreement accept all the provisions of Loan Regulations No. 4 of the Bank, dated February 15, 1961,¹ subject, however, to the modifications thereof set forth in Schedule 3² to this Agreement (said Loan Regulations No. 4 as so modified hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

Section 1.02. Except where the context otherwise requires, the following terms have the following meanings wherever used in this Agreement or any Schedule to this Agreement :

(a) The term "PIF" means Peruvian Investment and Finance Limited, a corporation incorporated under the laws of Canada, being the beneficial owner of the entire issued share capital of the Borrower and shall include any company which is effectively controlled by PIF other than the Borrower.

(b) The term "Inter-Company Debenture" means the debenture dated March 1, 1956 evidencing the indebtedness of the Borrower to PIF in the principal sum of \$10,000,000 (of which \$9,220,761 is outstanding at the date hereof), and shall include any instrument supplemental thereto or substituted therefor.

(c) The term "Central Railway" means the railway system which connects Lima and Callao with Oroya and Huancayo (including the Morococha Branch) and includes all the properties, movable and immovable, comprised in, or necessary or habitually employed in, the operation of such system.

(d) The term "Southern Railway" means the railway system which connects Mollendo, Arequipa, Juliaca, Puno and Cuzco and includes all the properties, movable and immovable, comprised in, or necessary or habitually employed in, the operation of such system.

(e) The term "Mortgage" means collectively any and all security instruments created pursuant to the provisions of Section 5.04 of this Agreement in favor of the Bank and of the holders from time to time of the Loan and the Notes and shall include all instruments supplemental or additional thereto or in substitution therefor.

¹ See p. 252 of this volume.

² See p. 276 of this volume.

(f) "Representative" means the agent appointed pursuant to Section 5.04 (a) of this Agreement, and shall include any successor agent or agents.

(g) The term "Eximbank Lines of Credit" means the agreements dated August 28, 1956 and January 11, 1962 between Export-Import Bank of Washington (hereinafter called Eximbank) and the Borrower, whereby Eximbank granted to the Borrower lines of credit in the amounts of \$1,550,000 and \$1,500,000 (of which \$852,500 and \$1,500,000 respectively are outstanding at the date thereof).

(h) The term "Subsidiary" means any company which is a subsidiary of the Borrower within the meaning of the Companies Act 1948 of the United Kingdom of Great Britain and Northern Ireland (hereinafter called the United Kingdom).

(i) The term "Notes" means notes executed and delivered by the Borrower pursuant to the provisions of this Agreement; and such term includes any such notes issued in exchange for, or on transfer of, Notes as herein defined.

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 two hundred fifty thousand dollars (\$13,250,000).

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.

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 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. 274 of this volume.

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 Part A of the Project described in Schedule 2¹ to this Agreement. The specific goods to be financed out of the proceeds of the Loan and 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. 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 operation and maintenance of the Central and Southern Railways and its facilities.

Article IV

NOTES

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

Section 4.02. Any one of the Directors of the Borrower, and the Secretary of the Borrower or such other person or persons (acting jointly or severally as may be specified) as may be authorized for the purpose by the Directors of the Borrower, are designated as authorized representatives of the Borrower for the purposes of Section 6.12 (a) of the Loan Regulations.

Section 4.03. The Bank and the Borrower shall be at liberty to make such arrangements as they may from time to time mutually agree as to procedure for the issue, authentication and delivery of the Notes and such arrangements may be in addition to or in substitution for any of the provisions of this Agreement or of the Loan Regulations.

Article V

PARTICULAR COVENANTS

Section 5.01. (a) The Borrower shall carry out the Project and maintain its properties and facilities with due diligence and efficiency and in conformity with sound railway, engineering and financial practices.

(b) Upon request from time to time by the Bank, the Borrower shall promptly furnish or cause to be furnished to the Bank the plans, specifications and work schedules for the Project and any material modifications subsequently made therein, in such detail as the Bank shall reasonably request.

(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

¹ See p. 274 of this volume.

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.

(d) The Borrower shall enable the Bank's representatives to inspect the Project, the goods, all other plants, works, properties and equipment of the Borrower and any relevant records and documents.

(e) The Borrower 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.

(f) The Borrower shall have its annual financial statements (balance sheet and profit and loss statement) audited by an independent accountant or accounting firm acceptable to the Bank and shall promptly after their preparation and not later than four months after the close of the Borrower's fiscal year transmit to the Bank copies of such statements and a signed copy of the accountant's or accounting firm's report and certificate.

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.

(c) The Borrower shall cause each of its Subsidiaries (if any) to observe and perform the obligations of the Borrower hereunder to the extent to which the same may be applicable thereto as though such obligations were binding upon each of such Subsidiaries.

Section 5.03. The Borrower undertakes that, except for the Mortgage and except as provided in Section 5.04 (c) of this Agreement and except as the Bank shall otherwise agree, no lien shall be created on any assets of the Borrower or of any subsidiary as security for any debt; 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 whole or part 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.

Section 5.04. The Borrower shall, as soon as practicable, take all such action and execute such instrument or instruments as shall be necessary or proper in order to constitute, in favor of the Bank and of the holders from time to time of the Loan and the Notes, a *hipoteca civil y prenda mercantil* of the first grade in accordance with the laws of Peru on the immovable and movable properties now or hereafter comprised in the Central Railway

and in the Southern Railway, except as the Bank shall otherwise agree and except such movable properties as are subject to liens permitted by Section 5.03 (i) and subparagraph (c) (i) (a) of this Section of this Agreement. The instrument or instruments constituting the Mortgage shall be in such form and of such substance as the Bank shall reasonably require and shall in any event contain provisions to the following effect :

(a) The Bank shall designate, and the Borrower shall join with the Bank in appointing, an agent who shall have the exclusive right, on the terms provided in the instrument of appointment, to represent the holders from time to time of the Loan and the Notes in all matters relating to or arising out of the Mortgage or the enforcement of any rights thereunder. The terms of appointment of the Representative shall include provisions entitling the Representative to take action under the Mortgage. The costs and fees of the Representative shall be paid by the Borrower.

(b) Notes which shall have been executed and delivered and the portion of the Loan not evidenced by Notes shall be secured by the liens of the Mortgage equally and ratably in proportion to the aggregate amount of the Notes and of the Loan not evidenced by Notes outstanding, without preference, priority or distinction in respect of any part of the Notes over any other part of any of the Notes or of any portion of the Loan over any other portion of the Loan or over any part of any of the Notes by reason of the date of execution, delivery, creation, or maturity thereof, or otherwise.

(c) The Borrower shall agree that it will not dispose of, or create any further lien upon properties or assets subject to the liens of the Mortgage without the consent of the Bank and of the Representative ; provided, however, that, without such consent, the Borrower may :

(i) execute such instrument or instruments as shall be necessary or proper in order to constitute (a) in favor of Eximbank a *hipoteca civil y prenda mercantil* of the same grade as that evidenced by the Mortgage and ranking *pari passu* in all respects therewith to secure indebtedness under the Eximbank Lines of Credit and under the agreement with Eximbank specified in Section 7.01 (c) of this Agreement, and (b) in favor of the Banco Industrial del Perú as representing the Guarantor, a *hipoteca civil y prenda mercantil* of a grade junior to the Mortgage and to the security referred to in (a) of this subparagraph, by way of indemnity to the Guarantor in respect of any liabilities which it may pay or discharge under the Guarantee Agreement ;¹ and

(ii) sell or otherwise dispose of any property which shall have become worn-out or obsolete.

The Borrower shall further agree that it will pay all taxes which might, if unpaid, result in liens on, or preferential claims against, any of the properties subject to the liens of the Mortgage ; that it will maintain and renew such properties ; and that it will keep such properties insured in such amounts, against such risks and with such companies as shall be satisfactory to the Bank.

Section 5.05. The Borrower shall cause the Mortgage to be duly recorded, registered and filed in accordance with the requirements of the laws of Peru and of the United Kingdom, and shall take all such other action and execute, deliver, record, register and file all

¹ See p. 246 of this volume.

such other documents as the Bank or the Representative may from time to time reasonably request, or as may from time to time be necessary or proper, in order to implement the provisions of the Mortgage and to render and maintain the Mortgage fully effective in accordance with its terms; and shall, promptly after the taking of any such action or the execution and delivery of any such documents, furnish to the Bank and to the Representative evidence thereof satisfactory to the Bank and to the Representative.

Section 5.06. Without prejudice to any immunity enjoyed by the Borrower, 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 or of the United Kingdom on or in connection with the execution, issue, delivery or registration of this Agreement, the Guarantee Agreement, the Notes or the Mortgage, or imposed under the laws of the Guarantor or laws in effect in the territory of the Guarantor on or in connection with the payment of principal, interest or other charges thereunder; provided, however, that the provisions of this Section shall not apply to taxation of payments under any Note to a holder thereof other than the Bank when such Note is beneficially owned by an individual or corporate resident of the Guarantor.

Section 5.07. 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 Notes 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, the Notes or the Mortgage.

Section 5.08. (a) The Borrower shall insure or cause to be insured with responsible insurers all goods financed out of the proceeds of the Loan. Such insurance shall cover such marine, transit and other hazards incident to purchase, importation and delivery of the goods to the Borrower in the territory of the Guarantor and shall be for such amounts, as shall be consistent with sound commercial practices. Such insurance shall be payable in dollars or in the currency in which the cost of the goods insured thereunder shall be payable.

(b) In addition, the Borrower shall take out and maintain, with responsible insurers, insurance against such risks and in such amounts as shall be consistent with sound railway and business practices.

Section 5.09. (a) The Borrower shall at all times take all steps necessary to maintain its corporate existence and right to carry on operations and 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 in the conduct of its business.

(b) The Borrower shall carry on its operations and conduct its affairs in accordance with sound business and financial practices and shall operate, maintain, renew and repair its equipment and property as required in accordance with sound engineering practices.

Section 5.10. Subject to the provision of section 5.04 (c) of this Agreement and except as the Bank shall otherwise agree, neither the Borrower nor any Subsidiary shall, during any period of twelve months, sell, lease or otherwise dispose of any property having a value in excess of one hundred thousand dollars (\$100,000), or the equivalent.

Section 5.11. Except as the Bank shall otherwise agree, (a) neither the Borrower nor any Subsidiary shall incur any indebtedness except in the ordinary course of business and (b) the aggregate amount remaining outstanding of indebtedness of the Borrower and of its Subsidiaries (exclusive of indebtedness under this Agreement, under the Eximbank Lines of Credit, under the agreement with Eximbank specified in Section 7.01 (c) of this Agreement and under the Inter-Company Debenture and exclusive of monies owing by the Borrower to any Subsidiary or by any Subsidiary to another Subsidiary or to the Borrower) shall not at any time exceed the equivalent of one million dollars (\$1,000,000).

Section 5.12. (a) The Borrower shall cause the Inter-Company Debenture to be amended, in manner satisfactory to the Bank, so as to provide, *inter alia* :

(1) That, subject as hereinafter provided, or except as the Bank shall otherwise agree, no payment shall be made to PIF in respect of the principal and interest on the Inter-Company Debenture or otherwise, except from net earnings, and unless there shall remain after such payment net liquid assets equivalent to not less than two million dollars (\$2,000,000).

(2) That, notwithstanding sub-section (1) of this Section (to the intent that PIF may receive, during the five year period ending June 30, 1967, sums aggregating the equivalent of two million two hundred five thousand dollars (\$2,205,000) to enable it to service its own debentures), payments of interest under the Inter-Company Debenture shall, in any case, be made in each fiscal year ending on June 30, 1963, 1964, 1965, 1966 and 1967 in an amount equivalent to four hundred forty-one thousand dollars (\$441,000).

(3) That, after June 30, 1967, the Borrower shall make payments (including payments of interest) to PIF, only if the requirements of sub-section (a) (1) of this Section are met, and then only as follows :

- (i) first, payment of current interest on the Inter-Company Debenture ; and then
- (ii) payment not exceeding 50% of any remaining net earnings to reduce arrears of debt service on the Inter-Company Debenture ; and then
- (iii) payment for any other purpose and in any amount to the extent that Retained Earnings (as shown in the audited balance sheet) after such payment would exceed the equivalent of one million dollars (\$1,000,000)

(b) Except as the Bank shall otherwise agree, for the purpose of sub-section (a) of this Section : "net earnings" shall mean net income (but shall not include in net income

proceeds of sale of land, buildings, locomotives or other capital assets) of the Borrower, as determined in accordance with sound accounting practices, in respect of the last preceding fiscal year, after paying or making proper provision in respect of such year for :

- (i) operating expenses, including depreciation at the rate of at least 14% of gross revenues ;
- (ii) taxes, if any ;
- (iii) interest on the Loan and on loans made pursuant to the Eximbank Lines of Credit and on any other loans or credits which the Borrower shall hereafter contract with the consent of the Bank (but before paying or making provision for interest payable in accordance with the terms of the Inter-Company Debenture) ; and

“Net liquid assets” shall mean current assets, excluding stores and materials, less current liabilities including those accrued but not paid as of the date of computation, excluding accrued debt due PIF in respect of past fiscal years.

(c) The Borrower covenants that it will not make payments to PIF, or to any other shareholder, except in accordance with the provisions of the Inter-Company Debenture as amended pursuant to this Section.

Section 5.13. The Borrower shall from time to time take all such action, and make such applications, as shall be necessary to obtain prompt adjustments of its rates to permit it to obtain gross revenues not less than those contemplated in Section 3.06 of the Guarantee Agreement.

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 of the events specified in Section 6.02 of this Agreement shall occur or (iii) 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 Notes 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 Mortgage or the Notes to the contrary notwithstanding.

Section 6.02. For the purposes of Section 5.02 (j) of the Loan Regulations, the following additional events are specified :

(a) If the Inter-Company Debenture shall, without the prior agreement of the Bank, have been amended (otherwise than as provided in this Agreement) or abrogated or any waiver shall have been granted in respect thereof.

(b) If there shall have occurred any event specified in the Mortgage as an event of default.

(c) If any creditor who has provided credit shall have made formal demand for repayment in advance of maturity by reason of any default specified in an agreement with such creditor.

(d) If, after the date of this Agreement, there shall have occurred any material change in the financial condition of the Borrower.

Article VII

EFFECTIVE DATE ; TERMINATION

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

(a) That the Mortgage shall have been duly executed and delivered and have become fully effective in accordance with its terms and with the laws of Peru and (except as the Bank may otherwise agree) shall have been registered, recorded or filed in accordance with the laws of Peru and of the United Kingdom.

(b) That the Inter-Company Debenture shall have been amended, to the satisfaction of the Bank, in accordance with the provisions of Section 5.12 of this Agreement and, as so amended, shall have been delivered to and accepted by PIF.

(c) That the Borrower shall have been granted pursuant to an agreement satisfactory to the Bank a credit from Eximbank in an amount in various currencies equivalent to about five million dollars (\$5,000,000), said credit to be in addition to the existing Eximbank Lines of Credit.

Section 7.02. The following are specified as additional matters, 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 :

(a) That the Borrower has an absolute and unencumbered title under applicable Peruvian law to the immovable and movable property comprised in the Mortgage, and is the absolute proprietor, free of encumbrances, of all the assets comprised in the Mortgage, and is the absolute proprietor, free of encumbrances, of all the assets comprised in the Central Railway and the Southern Railway.

(b) That the Mortgage has been duly authorized and executed, delivered, recorded, registered and filed on behalf of the Borrower and constitutes a valid and effective security enjoying priority in accordance with its terms and that no prior or *pari passu* lien (other than as mentioned in Section 5.04 (c) hereof) then exists on any part of the properties comprised in the Mortgage.

(c) That the Inter-Company Debenture, with such amendments as are provided for in Section 5.12 of this Agreement, has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and constitutes a valid and binding obligation of the Borrower in accordance with its terms.

(d) That the Borrower has full power and authority to operate its undertaking and to carry out the Project and has all necessary rights and powers in connection therewith and that all acts, consents and approvals necessary therefor have been duly and validly performed or given.

(e) That the agreement with Eximbank, specified in Section 7.01 (c) hereof, has become effective and binding in all respects upon the parties thereto in accordance with the terms of such agreement and subject only to the effectiveness of this Agreement.

Section 7.03. A date 120 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 June 30, 1967, or such other date as shall be agreed by the Bank and the Borrower as the Closing Date.

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

For the Borrower :

The Peruvian Corporation Limited
Apartado 1379
Lima
Peru

Alternative address for cablegrams and radiograms :

Impulsive
Lima, Peru

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 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 George D. WOODS
President

The Peruvian Corporation Limited :

By A. BRAZZINI
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>
December 1, 1967	395,000	December 1, 1973	550,000
June 1, 1968	410,000	June 1, 1974	565,000
December 1, 1968	420,000	December 1, 1974	580,000
June 1, 1969	430,000	June 1, 1975	595,000
December 1, 1969	445,000	December 1, 1975	615,000
June 1, 1970	455,000	June 1, 1976	630,000
December 1, 1970	465,000	December 1, 1976	645,000
June 1, 1971	480,000	June 1, 1977	665,000
December 1, 1971	495,000	December 1, 1977	685,000
June 1, 1972	505,000	June 1, 1978	700,000
December 1, 1972	520,000	December 1, 1978	720,000
June 1, 1973	535,000	June 1, 1979	745,000

* 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	2%
More than six years but not more than eleven years before maturity	3 1/2%
More than eleven years but not more than fourteen years before maturity	4 1/2%
More than fourteen years before maturity	5 1/2%

SCHEDULE 2

DESCRIPTION OF PROJECT

The Project is the program of the Borrower for the modernization and rehabilitation of the Central and Southern Railways in Peru subsequent to July 1, 1961. It includes :

- A. The acquisition, introduction into service and operation of 22 new diesel locomotives with spare parts ; 171 freight cars of various types ; purchase and installation of equipment and structural steel for workshop facilities located at Guadalupe, Chosica, Arequipa and Juliaca ; purchase and laying of about 29,000 tons of 80 lb. rails with fittings for tracks of the Central and Southern Railways ; and purchase and installation of miscellaneous railway equipment.

- B. The acquisition, introduction into service and operation of 19 new 2000 hp diesel-electric locomotives for the Central Railway and 6 new 2000 hp diesel-electric locomotives for the Southern Railway.

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 February 15, 1961, are modified as follows :

(a) Wherever used in the Loan Regulations the term "Notes" shall be substituted for the term "Bonds" and the term "Note" shall be substituted for the term "Bond".

(b) By the deletion of subparagraph (f) of Section 5.02 and the substitution therefor of the following subparagraph, namely :

"(f) The Guarantor or any governmental authority having jurisdiction shall have taken any action for the dissolution or disestablishment of the Borrower or for the suspension of its operations or for the acquisition or control of assets necessary for the effective and efficient operation of its undertaking."

(c) By the deletion of subparagraph (a) of Section 6.12 and the substitution therefor of the following new subparagraph, namely :

"(a) The Notes shall be under the Common Seal of the Borrower and the affixation of such Seal shall be attested by the manual signatures of its authorized representatives designated in the Loan Agreement for the purposes of this Section. Coupons attached to Coupon Notes shall be authenticated by the facsimile signature of any one of the authorized representatives of the Borrower so designated. If any authorized representative of the Borrower whose manual or facsimile signature shall be affixed to any Note or Coupon shall cease to be such authorized representative, such Note or Coupon may nevertheless be delivered, and shall be valid and binding on the Borrower, as though the person whose manual or facsimile signature shall have been affixed to such Note or Coupon had not ceased to be such authorized representative."

(d) By the deletion of Section 6.18

(e) By the deletion of subparagraphs (b) to (f) inclusive and (i) and (j) of Section 7.04 and the substitution therefor of the following subparagraphs, namely :

"(b) Except as the Bank, the Borrower and the Guarantor shall otherwise agree, the parties to such arbitration shall be the Bank, the Borrower and the Guarantor.

"(c) The Arbitral Tribunal shall consist of three arbitrators, each to be agreed upon by the parties or, if and to the extent to which they shall not agree, to be appointed by the President of the International Court of Justice or, failing appointment by him, by the Secretary-General of the United Nations. In case any arbitrator shall resign, die or become unable to act, a successor arbitrator shall be selected or appointed in the same manner as herein prescribed for the selection or appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.

“(d) An arbitration proceeding may be instituted under this Section upon notice by the party instituting such proceeding to the other parties. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration and the nature of the relief sought.

“(e) If, within 60 days after the giving of such notice instituting the arbitration proceeding, the parties shall not have agreed upon the three arbitrators, any party may request such appointment as is provided for in paragraph (c) of this Section.

“(f) The Arbitral Tribunal shall determine where and when it shall convene and sit.

“(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 proceedings. 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. Each of the parties shall defray its own expenses in the arbitration proceedings. The costs of the Arbitral Tribunal shall be divided and borne equally between the parties. 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.

“(j) The provisions for arbitration set forth in this Section shall be in lieu of any procedure for the determination of controversies between the parties arising under the Loan Agreement and Guarantee Agreement or any claim by any such party against any other such party arising thereunder; provided, however, that nothing herein shall be deemed to preclude any of the said parties from exercising, or instituting any legal or equitable action to enforce, any right or claim arising out of or pursuant to the Mortgage or the Notes, and submission to arbitration hereunder shall not be deemed to be a condition precedent or in any way to prejudice such exercise or other enforcement of any such right or claim.”

(f) By the deletion of paragraph 9 of Section 10.01.

(g) By the deletion of the second paragraph of each of the forms of Bonds set forth respectively in Schedule 1 and Schedule 2 and the substitution therefor in each such form of the following paragraph, namely :

“This Note is one of an authorized issue of notes in various currencies equivalent to an aggregate principal amount of \$ known as the Guaranteed Serial Mortgage Notes of [the Borrower] (hereinafter called the Notes) issued or to be issued under a Loan Agreement dated 1963, between International Bank for Reconstruction and Development (hereinafter called the Bank) and [the Borrower] and guaranteed by the Republic of Peru in accordance with the terms of a Guarantee Agreement dated 1963 between the Republic of Peru and the Bank. No reference herein to said Agreements shall confer upon the holder hereof any rights thereunder or impair the obligation of [the Borrower], which is absolute and unconditional, to pay the principal and interest on this Note at the times and place and in the amounts and in the currency herein prescribed.

“The Notes and the portion of the Loan not evidenced by Notes are equally and ratably secured by means of an instrument constituting a *hipoteca civil y prenda mercantil* created by [the Borrower] under the laws of the Republic of Peru (such instrument being hereinafter called the Mortgage). Pursuant to the Mortgage, the Bank and [the Borrower] have conferred upon as Representative the exclusive right on the terms therein provided to represent the Bank and the holders from time to time of the Notes in all matters relating to or arising out of the Mortgage or the enforcement of any rights thereunder. In accepting this Note, the holder hereof agrees to the appointment of such Representative pursuant to the terms and conditions of the Mortgage.”

(h) By the addition, at the end of the seventh paragraph of the Form of Note set forth in Schedule 1 and at the end of the sixth paragraph of the Form of Note set forth in Schedule 2, of the sentence following, namely :

“In certain events provided in the Mortgage, the Representative may (subject to the conditions therein provided) declare the principal of all the Notes then outstanding (if not already due) to be due and payable immediately, and upon any such declaration such principal shall be due and payable immediately.”

LETTERS RELATING TO THE LOAN AGREEMENT

I

PERUVIAN EMBASSY
WASHINGTON 6, D.C.

March 13, 1963

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

Re : *Loan No. 334 PE (Railway Rehabilitation Project)*
Letter re Railway Tariffs

Gentlemen :

During negotiations for the loan to modernize and rehabilitate the Central and Southern Railways of Peru, we have discussed the significance of recent Peruvian legislation regarding inland transportation, and have reached a consensus of opinion about it, as embodied in this letter.

This legislation particularly concerns the establishment of the independent Commission for the Economic Regulation of Transport which is charged with the fixing of rates for all enterprises providing public transport, and to study, and make recommendations for, the development of transport services, financing of such development, the establishment of safety measures, and other related subjects. The legislation includes : Laws No. 13658 of 1961, 13700 and 13850 of 1962, the latter two laws being amplified by the *Reglamento*

approved and ordered to be promulgated by Supreme Resolution No. 20-DM of April 27, 1962. Certain Articles of said *Reglamento* form the bases for the covenant embodied in Section 3.06 of the Guarantee Agreement.¹ Article 54 provides that maximum rates shall be based on the necessity of the transporter to cover the costs of operation and debt service and to obtain a reasonable return on the capital invested in the enterprise. Articles 72-76 set forth the procedure for valuation, for the purpose of fixing rates, of capital invested in the undertaking. Article 79 specifies the items of expense which are operating costs. Article 80 requires depreciation charges to be not less than 3% nor more than 15% of depreciable physical assets. These measures have been adopted by Peru to establish the standards for maximum rates. Furthermore, to encourage healthy competition among types of transportation, Peru enacted Law 13658 to permit charges below the maximum rate and this policy has been confirmed in Article 55 of said *Reglamento*. It is these enactments, and the Peruvian policy enunciated by them, that provide the substance for Section 3.06 of the Guarantee Agreement.

The Guarantor recognizes that it is vitally important that the Borrower be permitted to operate and to maintain its financial position in conformity with sound railway, engineering and financial practices. To this end we have agreed to the texts of the Loan and Guarantee Agreements. The latter are consistent with the laws and decrees specified above, which, as the Guarantor recognizes, constitute one of the material bases upon which you have agreed to make the loan.

Please confirm your agreement with the foregoing by signing the form of confirmation on a copy of this letter.

Very truly yours,

Republic of Peru :

By F. BERCKEMEYER
Authorized Representative

Confirmed :

International Bank for
Reconstruction and Development :

By G. M. WILSON

¹ See p. 246 of this volume.

II

THE PERUVIAN CORPORATION LIMITED
LIMA, PERU

March 13, 1963

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

Re : *Loan No. 334 PE (Railway Rehabilitation Project)*
Letter re Disbursements and Reimbursements

Gentlemen :

We refer to Article II of the Loan Agreement of even date¹ between us and to Article II of the Bank's Loan Regulations No. 4 dated February 15, 1961 which provide for the opening of a Loan Account, the payment of commitment charges and interest on the Loan and to Article IV of said Loan Regulations which lays down the procedures for withdrawals from the Loan Account. We request your agreement to the further arrangements set forth herein.

To the maximum extent consistent with sound railway and financial practices, the Peruvian Corporation Limited (the "Corporation") will expend its own funds to complete its rehabilitation program and will endeavor to limit the amount of the Loan. Such practices require the maintenance of net quick assets, as defined below, equivalent to U.S. \$1.5 million, the amount estimated to be needed under normal circumstances. Such practices may also require the maintenance of stores and materials, as defined below, at a maximum level equivalent to \$3.0 million, the amount estimated to be needed under operational conditions until July 1, 1965. Furthermore, it is expected that the purchase of all goods for the rehabilitation program will be completed by June 30, 1965 ; and that the Loan Account will be closed on June 30, 1967.

In furtherance of these objectives under such circumstances, the Corporation undertakes to finance the purchase of goods and costs in the attached List of Goods from its own resources whenever, and to the extent that, its net quick assets exceed the equivalent of \$1.5 million. From July 1, 1965 to June 30, 1967, inclusive, the Corporation further undertakes to reimburse the Loan Account as hereinbelow provided to the extent that the net quick assets of the Corporation exceed the equivalent of \$1.5 million.

¹ See p. 254 of this volume.

In order that these undertakings can be carried out, it is agreed that until July 1, 1967, no application for withdrawal will be accepted from the Corporation unless the Corporation certifies that as of the date of the application its net quick assets do not exceed the equivalent of \$1.5 million, after taking into account the amount of the withdrawal applied for.

After June 30, 1965 the Corporation shall submit to the Bank each month a certificate, dated as of the end of the last preceding months, showing its net quick assets, accompanied, if such net quick assets exceed the equivalent of \$1.5 million, by a payment to reimburse the Loan Account in the amount of such excess. The Loan Account shall be credited with the amount of any such reimbursement. Any amounts so credited to the Loan Account shall for the purposes of Section 2.03 of the Loan Agreement cease to be treated as withdrawn as of the date of such reimbursement.

For the purposes of these undertakings :

- a) "Net quick assets" shall be defined as cash plus other current assets (except stores and materials) less current liabilities including those accrued but not paid as of the date of the pertinent certificate, and excluding : (i) interest accrued on the Bank Loan through June 30, 1965 ; and (ii) debt service accrued but not payable under the Inter-Company Debenture as amended pursuant to the provisions of Section 5.12 of the Loan Agreement.

- b) Until July 1, 1965, "stores and materials" (except goods purchased for the rehabilitation program other than diesel locomotive spare parts) shall not be permitted to exceed a book or cost value, whichever is higher, equivalent to \$3.0 million. On or about July 1, 1965 the Corporation will review its operating practices to determine the appropriate quantity and value of stores and materials.

It is understood that these dates and amounts may be adjusted if in the future there are significant changes in the Corporation's requirements for its operations.

Please confirm your agreement with the foregoing by signing the form of confirmation on the enclosed copy of this letter and returning it to us.

Very truly yours,

The Peruvian Corporation Limited :

By Michael LUBBOCK
Authorized Representative

Confirmed :

International Bank for
Reconstruction and Development :

By G. M. WILSON