

No. 8274

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

Guarantee Agreement—*Second East African Railways and Harbours Project* (with related letters and annexed Loan Regulations No. 4). Signed at Washington, on 29 September 1965

Official text: English.

Registered by the International Bank for Reconstruction and Development on 21 July 1966.

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

Contrat de garantie — *Deuxième projet relatif aux chemins de fer et aux ports de l'Est africain* (avec lettres y relatives et, en annexe, le Règlement n° 4 sur les emprunts). Signé à Washington, le 29 septembre 1965

Texte officiel anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 21 juillet 1966.

No. 8274. GUARANTEE AGREEMENT¹ (*SECOND EAST AFRICAN RAILWAYS AND HARBOURS PROJECT*) BETWEEN THE REPUBLIC OF KENYA AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 29 SEPTEMBER 1965

AGREEMENT, dated September 29, 1965, between REPUBLIC OF KENYA (hereinafter called Kenya) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS (A) by an agreement of even date herewith between the Bank and the East African Common Services Authority (hereinafter called the Borrower), which agreement (and the schedules therein referred to are) hereinafter called the Loan Agreement, the Bank has agreed to make to the Borrower a loan in various currencies equivalent to thirty-eight million dollars (\$38,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that Kenya, the United Republic of Tanzania and the State of Uganda agree to guarantee such loan as provided in the respective Guarantee Agreements between such countries and the Bank;

(B) the United Republic of Tanzania and the State of Uganda have agreed to guarantee such loan as provided in the respective Guarantee Agreements³ between such countries and the Bank; and

(C) Kenya, in consideration of the Bank's entering into the Loan Agreement with the Borrower and the respective Guarantee Agreements with the United Republic of Tanzania and the State of Uganda, has agreed to guarantee such loan as hereinafter provided;

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, 1961,⁴ subject, however, to the modifications thereof set forth in Schedule 3⁵ to the Loan Agreement (said Loan Regulations No. 4 as so modified being hereinafter called

¹ Came into force on 20 April 1966, upon notification by the Bank to the Government of Kenya.

² See p. 327 of this volume.

³ See pp. 309 and 317 of this volume.

⁴ See p. 306 of this volume.

⁵ See p. 346 of this volume.

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

Section 1.02. The terms defined in the Loan Agreement shall have the same meaning herein.

Article II

Section 2.01. Without limitation or restriction upon any of the other covenants on its part in this Agreement contained, Kenya hereby unconditionally guarantees jointly and severally with the United Republic of Tanzania and the State of Uganda, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and the interest and other charges on, the Loan, the principal of and interest on the Bonds, the premium, if any, on the prepayment of the Loan or the redemption of the Bonds, and the punctual performance of all the covenants and agreements of the Borrower, all as set forth in the Loan Agreement and in the Bonds.

Section 2.02. Without limitation or restriction upon the provisions of Section 2.01 of this Agreement, Kenya specifically undertakes, whenever there is reasonable cause to believe that the funds available to the Borrower of the Administration will be inadequate to meet the estimated expenditures required for carrying out the Project or the capital development program referred to in Section 5.11 of the Loan Agreement, to make arrangements, satisfactory to the Bank, with the United Republic of Tanzania, the State of Uganda, the Borrower and the Administration or any one or more of them, promptly to provide the Administration or cause the Administration to be provided with such funds as are needed to meet such expenditures.

Article III

Section 3.01. It is the mutual intention of Kenya 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, Kenya undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of Kenya 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 arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

As used in this Section, the term "assets of Kenya" includes assets of Kenya or of any of its political subdivisions or of any agency of Kenya or of any such political subdivision including its share of the assets of the East African Currency Board or of any other agency fulfilling similar functions in Kenya; and the term "external debt" means any debt payable in any medium other than currency of Kenya, whether such debt is or may become payable absolutely or at the option of the creditor in such other medium.

Section 3.02. (a) Kenya 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 Kenya, such information shall include information with respect to financial and economic conditions in the territories of Kenya and the international balance of payments position of Kenya.

(b) Kenya 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. Kenya 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) Kenya shall afford all reasonable opportunity for accredited representatives of the Bank to visit any part of the territories of Kenya 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 Kenya 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 Kenya.

Section 3.04. This Agreement, the Loan Agreement, the Tanzania Guarantee Agreement, the Uganda Guarantee Agreement and the Bonds shall be free from any taxes that shall be imposed under the laws of Kenya 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 Kenya or laws in effect in its territories.

Article IV

Section 4.01. Kenya 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 Kenya for the time being responsible for finance and such person or persons as he shall designate in writing are designated as the authorized representatives of Kenya 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 Kenya :

Permanent Secretary to the Treasury
P.O. Box 30007
Nairobi, Kenya

Alternative address for cablegrams and radiograms :

Finance
Nairobi

For the Bank :

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Alternative address for cablegrams and radiograms :

Intbafrad
Washington, D.C.

Section 5.02. The Minister of Kenya for the time being responsible for finance 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 Kenya :

By J. S. GICHURU
Authorized Representative

International Bank for Reconstruction and Development :

By George D. WOODS
President

LETTERS RELATING TO THE GUARANTEE¹ AND LOAN² AGREEMENTS

September 29, 1965

International Bank for Reconstruction
and Development
1818 H Street, N.W.
Washington, D.C. 20433

Re : *Personnel and Wage Policies for the East African Railways
and Harbours Administration*

Gentlemen :

1. We refer to Section 5.02 (d) of the Loan Agreement² of even date between the Bank and the East African Common Services Authority (the Authority) and to the Guarantee Agreements of even date¹ between the Bank and the Republic of Kenya, the United Republic of Tanzania and the State of Uganda, respectively, in connection with a loan to the Authority for purposes of the East African Railways and Harbours Administration (the Administration). You have referred during the negotiations of this Loan to the importance of the Administration's personnel and wage policies in insuring that the Administration is able to maintain efficient operations and a sound financial position.
2. We hereby assure you that the Administration will not hire, or be required to hire, more staff and labor than efficient operation (including good maintenance, necessary repairs and essential construction) may justify; that the management of the Administration will be free to adjust its staff and labor force as the scale of operations may warrant; that wage scales will be geared to labor productivity, the cost-of-living and other economic factors; and that any increase in wage costs in an amount which would result in the Administration not earning a reasonable return on its net fixed assets as required by

¹ See pp. 290, 310 and 318 of this volume.

² See p. 328 of this volume.

Section 5.09 of the Loan Agreement will, if such increase is not offset in other ways, be compensated by tariff increases sufficient to insure such a reasonable return.

3. As we have informed you, the Administration, as a matter of general policy, intends to replace its expatriate (European or Asian) staff by local (East African) staff as fully and promptly as suitable replacements can be made. During the negotiations you have emphasized to us the need to retain expatriate staff until their replacements can be properly trained. We fully share the Bank's view on this matter. We agree that merit and competence will be the primary criteria for retention and promotions of the Administration's staff.

4. Finally, we agree that we will cause the Administration to continue its current training programs and to enlarge them as needed; and that adequate funds will be provided for this purpose.

Sincerely yours,

East African Common Services Authority :

By D. OMARI
Authorized Representative

Republic of Kenya :

By J. S. GICHURU
Authorized Representative

United Republic of Tanzania :

By Paul BOMANI
Authorized Representative

State of Uganda :

By L. KALULE-SETTALA
Authorized Representative

September 29, 1965

International Bank for Reconstruction
and Development
1818 H Street, N.W.
Washington, D.C. 20433

Re : *Financial Position of East African Railways
and Harbours Administration in 1968-71*

Gentlemen :

1. We refer to the Loan Agreement (*Second East African Railways and Harbours Project*) of even date between the Bank and the East African Common Services Authority

(the Authority) and the Guarantee Agreements (*Second East African Railways and Harbours Project*) between the Bank and the Republic of Kenya, the United Republic of Tanzania and the State of Uganda, respectively (the three East African countries). During the negotiations of these agreements we had several discussions with you of the difficult financial position anticipated for the East African Railways and Harbours Administration (the Administration) during the years 1968 through 1971.

2. About £28.3 million of long-term debt incurred for purposes of the Administration is due to mature in these four years. Of this amount £4.9 million is an obligation of Kenya, and £23.4 million is an obligation of the Authority and is jointly and severally guaranteed by the three East African countries. All of this debt is charged upon the Railways and Harbours Fund. £1.3 million of this maturing debt is presently held by the Administration. The sinking funds created by the Administration should provide funds for the repayment of £12.5 million of these obligations as they mature. The amount of debt due in 1968 through 1971 in connection with which additional provisions must be made is presently estimated to total approximately £14.5 million. Of this amount, a total of about £1.0 million is presently held by the three East African countries (or agencies of them) as follows: Kenya £596,939, Tanzania £100,158 and Uganda £335,044 and a further total of about £500,000 is held by other administrations of EACSO. The Governments of the three countries and the Authority agree that they will convert or otherwise extend until 1972 or a later date the maturities on this debt which they now hold or which they may acquire before maturity insofar as these maturities may not be required for payment of pensions or similar outgoings prior to 1972, and on the understanding that the Administration will similarly extend or convert the maturities on Administration holdings of Government and other EACSO loans. (The Administration presently holds approximately £800,000 of loans of these Governments and of other administrations of EACSO which will mature in the period up to 1971.) In addition, the Governments agree that they and the Administration will, not later than December 31, 1966, work out a plan, satisfactory to the Bank, to re-finance or redeem the remainder of this debt (including amounts held by the Governments) in a manner which will not force the Administration at the time of such re-financing or redemption or thereafter to curtail expenditures on proper maintenance and repairs and essential renewals. Such re-financing might require sinking fund payments before December 31, 1971 and we understand that, if the general plan of re-financing or redemption of this debt is satisfactory to the Bank, the Bank will be willing to give its agreement under Section 5.10 of the Loan Agreement to the incurring of debt in connection with such re-financing involving sinking fund payments before December 31, 1971.

3. In this connection, with reference to Section 5.11 of the Loan Agreement, the Administration considers it essential that a minimum amount of £18 million at 1965 price levels be spent for renewals, betterments, and additions for the four years commencing on January 1, 1968 in order to maintain the operating efficiency of the Administration, to keep its properties in good repair and to service growing traffic. It is the intention of the Administration that this £18 million will be spent in approximately equal amounts

in each of the four years. Pursuant to Section 5.11 the Authority will submit to you not later than December 31, 1966 for your approval a detailed program with provision for the expenditure of not less than this £18 million.

4. We have also agreed with you that it may be necessary to alter the railways and harbors tariffs and charges of the Administration to insure a maximum contribution from internally generated funds to the development expenditures described in the preceding paragraph. The Administration will consider alterations in its tariffs from time to time between 1966 and 1971 and will by these and other means (including reductions in costs) ensure that the rate of return on the Administration's net fixed assets will amount, under normal working conditions, to at least 6% per annum not later than the year 1971. Net fixed assets for this purpose shall include only assets in service, valued at depreciated replacement cost of renewable assets and original cost of non-renewable assets. We understand that you consider such a rate of return of 6% on net fixed assets as so defined a reasonable return for purposes of Section 5.09 of the Loan Agreement. We also confirm that the Administration will progressively revise its tariff structure so that tariffs will more nearly reflect the costs of service.

5. During the negotiations we have discussed with you provisions made by the Administration for accumulated pension liabilities. Because of premature retirement and exceptional pensions payments, the pension reserves have been drawn down and are no longer sufficient. We agree that in 1968 or 1969 the Administration will obtain from an independent actuary a report on the state of the reserves in relation to the accumulated and accruing pension liabilities and recommendations as to how these liabilities should be provided for. We agree to take appropriate action in regard to these recommendations.

6. In this letter we have used the sign "£" to denote pounds sterling in the currency of the United Kingdom of Great Britain and Northern Ireland.

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.

Sincerely yours,

East African Common Services Authority :

By D. OMARI
Authorized Representative

Republic of Kenya :

By J. S. GICHURU
Authorized Representative

United Republic of Tanzania :

By Paul BOMANI
Authorized Representative

State of Uganda :
By L. KALULE-SETTALA
Authorized Representative

Confirmed :
International Bank for
Reconstruction and Development :
By A. G. EL EMARY
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.*]
