

No. 9613

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

Guarantee Agreement—*Aluminium Project* (with annexed Loan Regulations No. 4, as amended, and Loan Agreement between the Bank and the Companhia Mineira de Alumínio-Alcominas). Signed at Washington on 26 January 1968

Authentic text : English.

Registered by the International Bank for Reconstruction and Development on 7 June 1969.

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

Contrat de garantie — *Projet relatif à l'industrie de l'aluminium* (avec, en annexe, le Règlement n° 4 sur les emprunts, tel qu'il a été modifié, et le Contrat d'emprunt entre la Banque et la Companhia Mineira de Alumínio-Alcominas). Signé à Washington le 26 janvier 1968

Texte authentique : anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 7 juin 1969.

GUARANTEE AGREEMENT¹

AGREEMENT, dated January 26, 1968, between BRAZIL (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 Companhia Mineira de Alumínio-Alcominas (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 twenty-two million dollars (\$22,000,000), on the terms and conditions set forth in the Loan Agreement, but on condition that the Guarantor agree to guarantee the payment of the principal, interest, and other charges on such loan;

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

WHEREAS the Guarantor represents and warrants that the giving of such guarantee is authorized by Law No. 1518 of December, 24 1951; Articles 22 and 23 of Law 1628 of June 20, 1952; Decree No. 57,482 of December 24, 1965 pursuant to Law 4131 of September 3, 1962; Law No. 4457 of November 6, 1964; and Law 5000 of May 24, 1966.

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 as amended February 9, 1967,³ subject, however, to the modifications thereof set forth in Schedule 3 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 several terms defined in the Loan Agreement shall have the same meanings as therein set forth.

¹ Came into force on 1 August 1968, upon notification by the Bank to the Government of Brazil.

² See p. 200 of this volume.

³ See p. 200 of this volume.

Article II

Section 2.01. Without limitation or restriction upon any of the other covenants on its part in this Guarantee Agreement contained, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and the interest and other charges on, the Loan, the principal of and interest on the Bonds and the premium, if any, on the prepayment of the Loan or the redemption of the Bonds, all as set forth in the Loan Agreement and the Bonds.

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 in the allocation or realization of foreign exchange. 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 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.

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 Banco Central do Brasil and any other institution performing the functions of a central bank for the Guarantor.

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. On the part of the Bank, such information shall include such information as shall be available to the Bank regarding the performance of the obligations of the Borrower under the Loan Agreement.

(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, and shall promptly inform each other 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 Guarantee Agreement, the Loan Agreement, the Shareholders Agreement,¹ the Indenture, 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.

Section 3.06. The Guarantor covenants that it will not take or permit any of its political subdivisions or any of its agencies, or any agency of any political subdivision, to take any action which would prevent or interfere with the performance by the Borrower of any of the covenants, agreements and obligations of the Borrower set forth in the Loan Agreement, and will take or cause to be taken all reasonable action which shall be necessary in order to enable the Borrower to perform such covenants, agreements and obligations.

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

¹ Shareholders Agreement (Agreement—*Aluminium Project* between the International Bank for Reconstruction and Development and the Companhia Mineira de Alumínio-Alcominas and the Aluminium Company of America and the Hanna Mining Company, dated January 26, 1968): not published herein.

delivered by the Borrower. The *Ministro da Fazenda* of the Guarantor and such person or persons as he shall appoint 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 :

Ministério da Fazenda
Av. Presidente Antonio Carlos 375
Rio de Janeiro, Guanabara, Brazil

Alternative address for cablegrams and radiograms :

Minifaz
Rio de Janeiro

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 *Ministro da Fazenda* 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.

Brazil :

By Jayme ALIPIO DE BARROS
Authorized Representative

International Bank for Reconstruction and Development :

By J. Burke KNAPP
Vice President

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

LOAN REGULATIONS No. 4, DATED 15 FEBRUARY 1961,
AS AMENDED 9 FEBRUARY 1967REGULATIONS APPLICABLE TO LOANS MADE BY THE BANK TO BORROWERS OTHER THAN
MEMBER GOVERNMENTS

[Not published herein. See United Nations, Treaty Series, vol. 598, p. 270.]

LOAN AGREEMENT

AGREEMENT, dated January 26, 1968, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and COMPANHIA MINEIRA DE ALUMINIO-ALCOMINAS, a corporation organized and existing under the laws of Brazil (hereinafter called the Borrower).

WHEREAS (A) The Borrower was incorporated on May 29, 1965 with the purposes and powers set forth in its *Estatutos* and for the immediate purpose of undertaking the Project as herein defined;

(B) All of the capital stock of the Borrower is now held by Aluminum Company of America (hereinafter called Alcoa), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, United States of America, and by The Hanna Mining Company (hereinafter called Hanna), a corporation organized and existing under the laws of the State of Delaware, United States of America;

(C) The Borrower proposes to recapitalize and to increase its capital stock to the equivalent of \$21,840,000 in order that after such recapitalization the capital stock of the Borrower may be subscribed as follows :

- (1) 50% by Alcoa in consideration of the payment of the equivalent of \$6,840,000 and the transfer to the Borrower of Alcoa's holdings of the capital stock of Companhia Geral de Minas (hereinafter called Geral) and of Pesquisas Mineraias Heco Limitada (hereinafter called Heco), which holdings are valued at the equivalent of \$4,080,000;
- (2) 23.5% by Hanna in consideration of the payment of the equivalent of \$3,212,000 and the transfer to the Borrower of Hanna's holdings of the capital stock of Geral and of Heco, which holdings are valued at the equivalent of \$1,920,000; and
- (3) 26.5% by Banco de Desenvolvimento de Minas Gerais (hereinafter called BDMG) pursuant to an agreement dated March 9, 1967 between BDMG and the Borrower (hereinafter called the Subscription Agreement) and by certain private Brazilian investors, in consideration of payment of an equivalent proportion of the equity capital of the Borrower;

(D) As a result of the transfers described in Recital (C) (1) and (2) above, Geral and Heco will be wholly owned subsidiaries of the Borrower;

(E) Under the terms of an agreement dated as of December 14, 1967 between the Borrower, First National City Bank, The Chase Manhattan Bank (National Association), and First National City Bank, as agent, the following additional financing has been secured by the Borrower for said Project :

- (1) loans aggregating \$8,000,000 for construction of the Project;
- (2) loans aggregating up to \$1,000,000 for short term financing during the period of construction of the Project; and
- (3) loans aggregating up to \$3,000,000 for working capital after completion of the construction of the Project;

(F) The Borrower and Alcoa have entered into (1) an agreement dated December 15, 1967 for the provision by Alcoa to the Borrower of management, consulting and staffing services (hereinafter called the Management Agreement), (2) an agreement dated December 15, 1967 for the provision by Alcoa to the Borrower of secret processes and technical information (hereinafter called the Technical Agreement), and (3) agreements dated December 15, 1967 for the provision by Alcoa to the Borrower of all engineering, purchasing and construction management services required for the construction and completion of the Project herein described (hereinafter called the Engineering Agreements);

(G) The Borrower intends to enter into an agreement with Centrais Elétricas de Minas Gerais S.A. (hereinafter called the CEMIG Agreement) under the terms of which the Borrower will be able to purchase sufficient electric power for an aluminum smelter with an initial capacity of 25,000 metric tons per annum and an expanded capacity of up to 50,000 metric tons per annum;

(H) The Bank, the Borrower, Alcoa, and Hanna are to enter into an agreement of even date herewith (hereinafter called the Shareholders Agreement)¹ under which Alcoa and Hanna will undertake certain obligations with respect to the Borrower and the loan which is the subject of this Agreement;

(I) The said loan is to be guaranteed as to payment of principal, interest and other charges by Brazil (hereinafter called the Guarantor) under the terms of a Guarantee Agreement² of even date herewith and is to be secured as provided in paragraph (c) of Section 7.01 of this Agreement; and

(J) The Bank, on the basis *inter alia* of the foregoing, has agreed to make a loan to the Borrower upon the terms and conditions hereinafter set forth;

NOW THEREFORE, it is hereby agreed as follows :

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 as amended February 9,

¹ Shareholders Agreement (Agreement—*Aluminium Project* between the International Bank for Reconstruction and Development and the Companhia Mineira de Alumínio-Alcominas and the Aluminium Company of America and the Hanna Mining Company, dated January 26, 1968) : not published herein.

² See p. 192 of this volume.

1967,¹ with the same force and effect as if they were fully set forth herein, subject, however, to the modifications thereof set forth in Schedule 3 to this Agreement (said Loan Regulations No. 4 as so modified being hereinafter called the Loan Regulations).

Section 1.02. Unless the context otherwise requires, the following terms wherever used in this Agreement have the following meanings :

(a) The term "Indenture" means the indenture to be executed by the Borrower in accordance with the provisions of paragraph (c) of Section 7.01 of this Agreement and (except where the context otherwise requires) shall include any deeds or instruments supplemental thereto; and

(b) The term "subsidiary" means any corporation, company, firm, or association directly or indirectly controlled by the Borrower.

Article II

THE LOAN

Section 2.01. The Bank agrees to lend to the Borrower an amount in various currencies equivalent to twenty-two million dollars (\$22,000,000).

Section 2.02. The Bank shall open a Loan Account on its books in the name of the Borrower and shall credit to such Account the amount of the Loan. The amount of the Loan may be withdrawn from the Loan Account as provided in, and subject to the rights of cancellation and suspension set forth in, this Agreement and the Loan Regulations; provided, however, that except as the Bank may otherwise agree, until all of the consideration described in Recital (C) above for the shares of the capital stock of the Borrower shall have been received by the Borrower, the aggregate of (i) the amount withdrawn from the Loan Account, (ii) the amount subject to special commitments entered into by the Bank pursuant to Section 4.02 of the Loan Regulations, and (iii) the consolidated debt (excluding the Loan) of the Borrower and its subsidiaries shall not exceed the equivalent of one hundred fifty per cent (150%) of the amount of such consideration which has been paid to the Borrower in cash. For the purpose of this Section the term "consolidated debt" shall have the meaning set forth in paragraph (b) of Section 5.10 of this Agreement, except that the term "debt" shall mean all debt, without regard to maturity. For the purpose of this Section the date of incurrence of debt shall be determined in accordance with the provisions of subparagraph (ii) of paragraph (b) of Section 5.10.

Section 2.03. Notwithstanding the provisions of Section 3.02 of the Loan Regulations, withdrawals from the Loan Account in respect of expenditures in the currency of the Guarantor or for goods produced in (including services supplied from) the territories of the Guarantor shall be in dollars or such other convertible currency or currencies as the Bank shall from time to time reasonably select.

¹ See p. 200 of this volume.

Section 2.04. 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 2.05. The Borrower shall pay interest at the rate of six and one-quarter per cent ($6\frac{1}{4}$) per annum on the principal amount of the Loan so withdrawn and outstanding from time to time.

Section 2.06. 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 commitment outstanding from time to time.

Section 2.07. Interest and other charges shall be payable semi-annually on February 15 and August 15 in each year.

Section 2.08. The Borrower shall repay the principal of the Loan in accordance with the amortization schedule set forth in Schedule 1 to this Agreement.

Article III

USE OF PROCEEDS OF THE LOAN

Section 3.01. The Borrower shall apply the proceeds of the Loan in accordance with the provisions of this Agreement to expenditures on the Project described in Schedule 2 to this Agreement. The specific allocation of the proceeds of the Loan, and the methods and procedures for procurement of the goods to be financed out of such proceeds, 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 used exclusively in carrying out the Project.

Article IV

BONDS

Section 4.01. If and as the Bank shall from time to time request, the Borrower shall execute and deliver Bonds representing the principal amount of the Loan as provided in the Indenture and Article VI of the Loan Regulations.

Section 4.02. The Director-President together with any other Director of the Borrower, or such person or persons as may be authorized for the purpose by the Board of 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 agree as to the procedure for the issue, authentication

and delivery of the Bonds and the form thereof and of the guarantees endorsed thereon, and such arrangements may be in addition to or in substitution for any of the provisions of the Loan Agreement.

Article V

PARTICULAR COVENANTS

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

(b) The Borrower shall furnish or cause to be furnished to the Bank, promptly upon their preparation, the specifications used for purposes of procurement of goods financed out of the proceeds of the Loan and the plans and construction schedules for the Project and any material modifications subsequently made therein.

(c) The Borrower shall maintain records adequate to identify the goods financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project (including the cost thereof) and to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition of the Borrower; shall enable the Bank's representatives to inspect the Project, the goods, all other properties and equipment of the Borrower and any relevant records and documents; and shall furnish to the Bank such information as the Bank shall reasonably request concerning the expenditure of the proceeds of the Loan, the Project, the goods, and the management, operations and financial condition of the Borrower.

(d) The Borrower shall have its financial statements (balance sheet and related statement of earnings and expenses) certified annually 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 fiscal year to which they apply, transmit to the Bank certified copies of such statements and a signed copy of the accountant's or accounting firm's report.

Section 5.02. (a) The Bank and the Borrower 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 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, the maintenance of the service thereof or the performance by the Borrower of its obligations under the Loan Agreement.

Section 5.03. (a) The Borrower shall take out and maintain with responsible insurers or make other provision satisfactory to the Bank for insurance against such risks and in such amount as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, the Borrower undertakes to insure the imported goods to be financed out of the proceeds of the Loan against marine, transit and other hazards incident to acquisition, transportation and delivery thereof of the place of use or installation and for such insurance any indemnity shall be payable in a currency freely usable by the Borrower to replace or repair such goods.

Section 5.04. The Borrower shall duly perform its obligations under the Management Agreement, the Technical Agreement and the Engineering Agreements and shall not, without the consent of the Bank, assign, amend, suspend, waive or abrogate, in whole or in part, any of such agreements.

Section 5.05. The Borrower shall not, without the consent of the Bank, sell, lease, transfer, or otherwise dispose of any of its properties or assets which shall be required for the efficient carrying on of its business and undertaking.

Section 5.06. (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 may otherwise agree, take all steps necessary to acquire and to retain such land, interests in land and properties and to acquire and to maintain and to renew such licenses, consents, franchises, or other rights, as may be necessary or useful for the construction and operation of the Project and the conduct of its business.

(b) The Borrower shall operate its undertaking and conduct its affairs in accordance with sound business and financial practices under the supervision of qualified and experienced management and shall operate, maintain, renew and repair its plants, machinery, equipment and property, including the Project, as required in accordance with sound engineering and mining practices.

Section 5.07. Except as the Bank shall otherwise agree, the Borrower shall not amend its *Estatutos*.

Section 5.08. Except as the Bank shall otherwise agree, the Borrower (1) shall not have any subsidiaries other than Geral and Heco and (2) shall not sell, transfer, mortgage, pledge, or otherwise dispose of any of the capital stock of Geral or Heco.

Section 5.09. The Borrower undertakes that, except as the Bank shall otherwise agree, no lien other than the lien created by or pursuant to the Indenture shall be created or maintained on any of the properties or assets of the Borrower 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 purchase price of such property; (ii) any lien of a grade inferior to that created by or pursuant to the Indenture covering assets subject to the lien created by or pursuant to the Indenture; (iii) any lien on assets not subject to the lien created by or pursuant to the Indenture, securing indebtedness to bankers incurred in the ordinary course of business and maturing on demand or not more than one year after the date on which it was originally incurred, the aggregate principal amount of such indebtedness

not to exceed the equivalent of \$4,000,000 at any one time outstanding and (iv) liens, not materially adversely affecting the operations of the Borrower, of a type permitted by the Indenture under the conditions prescribed therein.

Section 5.10. (a) Except as the Bank shall otherwise agree, the Borrower shall not incur any debt (other than the Loan, the debt referred to in Recital (E) above, and loans made pursuant to Sections 3 and 4 of the Shareholders Agreement) if, after the incurring of any such debt, the consolidated debt (including the Loan, the debt referred to in Recital (E) above, and loans made pursuant to Sections 3 and 4 of the Shareholders Agreement) of the Borrower and its subsidiaries would exceed the consolidated capital and surplus of the Borrower and its subsidiaries.

(b) For the purposes of this Section :

- (i) The term “ debt ” shall not include (A) debt payable on demand or maturing not more than one year after its date or (B) shareholder’s loans made pursuant to Section 6 of the Shareholders Agreement;
- (ii) The term “ incur ” with reference to any debt shall include any modification or extension of the terms of payment of such debt. Debt shall be deemed to be incurred on the date it is drawn down, and debt guaranteed by the Borrower or any of its subsidiaries shall be deemed to be incurred on the date of the agreement for such guarantee;
- (iii) Whenever in connection with this Section it shall be necessary to value in terms of Brazilian currency debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing such debt;
- (iv) The term “ consolidated debt ” shall mean the total amount of debt of the Borrower and its subsidiaries excluding debt owed by one of such companies to any of the others;
- (v) The term “ consolidated capital and surplus ” shall mean the total capital and surplus (or deficit), determined in accordance with sound accounting practices, of the Borrower and its subsidiaries after excluding such items of capital and surplus (or deficit) as shall represent the equity interest of one of such companies in any of the others.

Section 5.11. (a) Except as the Bank shall otherwise agree, the Borrower shall not declare or pay any dividend or make any other distribution with respect to its capital stock, or, directly or indirectly, redeem, purchase, or otherwise acquire, for any consideration, any shares of any class of its capital stock, if immediately after giving effect to such dividend, distribution, redemption, purchase or acquisition, the consolidated current assets of the Borrower and its subsidiaries would be less than the consolidated current liabilities of the Borrower and its subsidiaries.

(b) For purposes of this Section :

- (i) The term “ current assets ” shall mean cash, assets readily convertible into cash, and all other assets which would in the ordinary course of business be converted within one year into cash or assets readily convertible into cash;
- (ii) The term “ current liabilities ” shall mean liabilities due and payable and all other liabilities which would be due and payable, or could be called for payment, within one year including the portion of long-term indebtedness falling due within one year.

Section 5.12. (a) Subject to the provisions of Section 5.11, except as the Bank shall otherwise agree, the Borrower shall not pay any dividend or make any other distribution with respect to its capital stock (other than dividends or distributions payable solely in shares of the capital stock of the Borrower), or make, directly or indirectly, any redemption, purchase or other acquisition, for any consideration, of any shares of any class of its capital stock if the amount of such dividend, distribution, redemption, purchase or other acquisition would, when added to the amounts of all such dividends, distributions, redemptions, purchases and other acquisitions prior thereto by the Borrower, produce a sum exceeding 40% of the cumulative net earnings of the Borrower, unless the Borrower shall simultaneously repay or redeem in advance of maturity parts of the then outstanding amounts of the Loan and the Bonds and of the loans referred to in Recital (E) (1) of this Agreement equal in the aggregate to the amount of such sum in excess of 40% of such cumulative net earnings. The amount to be repaid under this paragraph shall be distributed proportionately among the Loan and the Bonds and the loans referred to in Recital (E) (1) of this Agreement on the basis of the amounts of each then outstanding. For the purposes of this subsection, “ cumulative net earnings of the Borrower ” shall be computed on the basis of the net earnings (or net loss) in respect of each fiscal year as initially reported by the Borrower to the Brazilian tax authorities for purposes of the federal Brazilian corporate income tax.

(b) Except as the Bank shall otherwise agree and except for repayments made pursuant to paragraph (a) of this Section, if the Borrower shall repay in advance of maturity part, or all, of the principal amount outstanding of either of the loans referred to in Recital (E) (1) of this Agreement, the Borrower shall repay or redeem in advance of maturity a proportionate part, or all, as the case may be, of the principal amount outstanding of the Loan and the Bonds.

(c) All the provisions of the Loan Regulations relating to repayment or redemption in advance of maturity shall be applicable to any repayment by the Borrower of the Loan and the Bonds in accordance with this Section.

Section 5.13. The Borrower shall exercise its rights under the terms of the Shareholders Agreement so as to ensure the provision to the Borrower of the funds specified in Sections 2, 3 and 4 of the Shareholders Agreement.

Section 5.14. 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 its territories on or in connection with the execution, issue, delivery or registration of the Loan Agreement, the Guarantee Agreement, the Shareholders Agreement, the Indenture or the Bonds, or the payment of principal, interest or other charges thereunder; provided, however, that the provisions

of this Section shall not apply to taxation of 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 5.15. 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 the Loan Agreement, the Guarantee Agreement, the Shareholders Agreement, the Indenture or the Bonds.

Section 5.16. Except as the Bank shall otherwise agree, after the completion of the Project the Borrower shall not make expenditures, or commitments for expenditures, for fixed or capital assets (including investments in other business entities), except (a) expenditures for repair or maintenance, (b) expenditures and commitments to make expenditures for fixed or capital assets (including investments in other business entities) not exceeding in the aggregate for the Borrower and its subsidiaries the equivalent of \$400,000 in any fiscal year, and (c) an amount equal to the portion of any investment which is allowed as a credit against the federal corporate income tax of Brazil and effectively reduces the Brazilian federal corporate income tax liability of the Borrower by such amount.

Section 5.17. The Bank and the Borrower agree that the obligations of the Borrower specified under Sections 5.01, 5.02, 5.03, 5.05, 5.06, 5.07, 5.08, 5.09, 5.10 and 5.16 shall apply to each of the subsidiaries of the Borrower, and the Borrower shall cause each such subsidiary to observe and perform such obligations as though such obligations were binding upon such subsidiary.

Article VI

REMEDIES OF THE BANK

Section 6.01. (i) If any event specified in paragraph (a), 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 a default shall occur in the payment of principal or interest or any other payment required under any other loan agreement between the Bank and the Borrower or under any bond delivered pursuant thereto or under any credit agreement between the Association and the Borrower and such default shall continue for a period of thirty days, or (iii) if a default shall occur in the payment of principal or interest or any other payment required under any loan agreement or under any guarantee agreement between the Guarantor and the Bank or under any bond delivered pursuant to any such agreement or under any credit agreement between the Association and the Guarantor under circumstances which would make it unlikely that the Guarantor would meet its obligations under the Guarantee Agreement and such default shall continue for a period of thirty days, or (iv) if any event specified in paragraph (a) or paragraph (b) of Section 6.02 of this Agreement shall occur, or (v) if any event specified in paragraph (c) of Section 5.02 of the Loan Regulations or in paragraph (c), paragraph (d) or paragraph (e) of 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 of any such event or default, 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 events are specified for the purposes of paragraph (1) of Section 5.02 of the Loan Regulations :

(a) Any other loan or credit to the Borrower shall have become due and payable prior to its agreed maturity pursuant to the terms thereof;

(b) The security constituted by the Indenture shall have become enforceable;

(c) A default shall have occurred in the performance of any covenant or agreement on the part of either Alcoa or Hanna under the Shareholders Agreement;

(d) A default shall have occurred in the performance of any covenant or agreement on the part of BDMG under the Subscription Agreement;

(e) The Management Agreement, the Technical Agreement, the Engineering Agreements, the Shareholders Agreement or the CEMIG Agreement shall have been in any material respect terminated, amended, suspended, waived or assigned without the prior approval of the Bank.

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(d) of the Loan Regulations :

(a) The Borrower shall have been recapitalized and the recapitalized capital stock subscribed, all as set forth in Recital (C) above;

(b) All of the capital stock of Geral and Heco shall have been transferred to the Borrower;

(c) The Borrower shall have executed and delivered an Indenture in form satisfactory to the Guarantor and the Bank creating the Bonds and securing the Loan and the Bonds by a first mortgage in favor of the Guarantor and the Bank over the assets from time to time of the Borrower and its subsidiaries falling within the definition of *bens imóveis* as defined in accordance with Articles 43 and 44 of the Civil Code of the Guarantor and shall have protocolized, recorded, filed and registered such Indenture, together with such other documents as may be necessary or proper, so as to render the same fully effective in accordance with its terms;

(d) The CEMIG Agreement shall have been entered into in form satisfactory to the Bank;

(e) The Borrower shall have, to the satisfaction of the Bank, validly acquired all such lands and properties and all such rights of way, easements, licences, consents, franchises, or other rights or privileges as may be necessary or requisite to enable it to construct the Project and operate its undertaking, or shall have made (to the like satisfac-

tion) effective arrangements for the acquisition thereof; and the Borrower shall have supplied to the Bank certificates, satisfactory to the Bank, setting forth particulars of the foregoing;

(f) All necessary acts, consents and approvals to be performed or given by the Guarantor, its political subdivisions or agencies or by any agency of any political subdivision or otherwise to be performed or given in order to authorize the carrying out of the Project and to enable the Borrower to perform all of the covenants, agreements and obligations set forth or referred to in this Loan Agreement, together with the necessary powers and rights in connection therewith, shall have been performed or given.

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 is duly organized and existing under the laws of Brazil and has full power to own the properties and to carry on the business which it owns and carries on and proposes to own and carry on for the purpose of the Project; that all acts, franchises, concessions, consents and approvals necessary therefor have been duly and validly performed or given; and that with such exceptions as the Bank may have approved, all easements, rights and privileges necessary therefor have been duly obtained;

(b) That the following agreements are valid and binding obligations of the respective parties thereto in accordance with their terms :

- (1) The Management Agreement, the Technical Agreement, and the Engineering Agreements;
- (2) The Shareholders Agreement;
- (3) The agreement referred to in Recital (E) of this Agreement;
- (4) The Subscription Agreement; and
- (5) The CEMIG Agreement;

(c) That the Indenture has been duly authorized and executed and delivered on behalf of the Borrower and creates a valid and effective first priority for the Loan and the Bonds over the *bens imóveis* of the Borrower and its subsidiaries and that no prior or equal security exists on any such assets;

(d) That all acts, consents, and approvals referred to in paragraph (f) of Section 7.01 together with all necessary powers and rights in connection therewith, have been duly and validly performed or given and that no other such acts, consents or approvals are required in order to authorize the carrying out of the Project and to enable the Borrower to perform all the covenants, agreements and obligations of the Borrower in the Loan Agreement contained.

Section 7.03. If this Agreement shall not have come into force and effect by May 1, 1968, this Agreement and all obligations of the parties hereunder shall terminate, unless the Bank, after consideration of the reasons for the delay, establishes a later date for purposes of this Section. The Bank shall promptly notify the Borrower and the Guarantor of such later date.

Article VIII

MISCELLANEOUS

Section 8.01. The Closing Date shall be December 31, 1970 or such later date as may be agreed by the Bank.

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

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 cables :

Intbafrad
Washington, D.C.

For the Borrower :

Companhia Mineira de Alumínio-Alcominas
Rua Líbero Badaró 471-22º andar
São Paulo 1, S.P., Brazil

Alternative address for cables :

Alcominas
São Paulo

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 J. Burke KNAPP
Vice President

Companhia Mineira de Alumínio-Alcominas

By Joaquin SERVERA
Director-President

By Lucas LOPES
Director

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>
August 15, 1971	\$915,000	August 15, 1977	915,000
February 15, 1972	920,000	February 15, 1978	920,000
August 15, 1972	915,000	August 15, 1978	915,000
February 15, 1973	915,000	February 15, 1979	915,000
August 15, 1973	920,000	August 15, 1979	920,000
February 15, 1974	915,000	February 15, 1980	915,000
August 15, 1974	915,000	August 15, 1980	915,000
February 15, 1975	920,000	February 15, 1981	920,000
August 15, 1975	915,000	August 15, 1981	915,000
February 15, 1976	915,000	February 15, 1982	915,000
August 15, 1976	920,000	August 15, 1982	920,000
February 15, 1977	915,000	February 15, 1983	915,000

* 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 (i) 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; or (ii) of any part of the principal amount of the Loan or of any Bond pursuant to Section 5.12 of this Agreement :

<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 1/4%
More than six years but not more than eleven years before maturity	3 3/4%
More than eleven years but not more than thirteen years before maturity	5%
More than thirteen years before maturity	6 1/4%

SCHEDULE 2
DESCRIPTION OF PROJECT

The Project consists of the construction and start-up of mining, refining, and smelting facilities for aluminum production to be located in Poços de Caldas, State of Minas Gerais, Brazil. The mine will have an initial capacity of about 100,000 metric tons per annum of bauxite. The refining plant will have a capacity of about 50,000 metric tons per annum of alumina and will use the Bayer process. The smelting plant will have a capacity of about 25,000 metric tons per annum of aluminum and will use the Hall process. The plants will be designed so that capacity can be easily expanded. The facilities are expected to be in operation by mid-1970.

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 as amended February 9, 1967, shall be deemed to be modified as follows :

(1) The second sentence of Section 4.01 shall read as follows : " Except as shall be otherwise agreed between the Bank and the Borrower, no withdrawals shall be made on account of (a) expenditures prior to January 1, 1967, or (b) expenditures in the territories of any country which is not a member of the Bank (other than Switzerland) or for goods produced in (including services supplied from) such territories. "

(2) By the deletion of Section 6.01.

(3) Section 6.07 is amended to read as follows :

" SECTION 6.07. *Form of Bonds.* The Bonds shall be fully registered bonds without coupons (hereinafter sometimes called registered Bonds) or bearer bonds with coupons for semi-annual interest attached (hereinafter sometimes called coupon Bonds). Bonds delivered to the Bank shall be registered Bonds or coupon Bonds in such temporary or definitive form (authorized by the Indenture) as the Bank shall request. Registered Bonds and coupon Bonds payable in dollars and the coupons attached thereto shall be substantially in the forms respectively set forth in the Indenture. Bonds payable in any currency other than dollars shall be substantially in the forms respectively set forth in the Indenture, as the case may be, except that they shall (a) provide for payment of principal, interest and premium on redemption, if any, in such other currency, (b) provide for such place of payment as the Bank shall specify, and (c) contain such other modifications as the Bank shall reasonably request in order to conform to the laws or to the financial usage of the place where they are payable. All Bonds shall have the guarantee of the Guarantor endorsed thereon substantially in the form set forth in Schedule 3 to these Regulations. "

(4) The following sentence is added at the beginning of Section 6.09, namely :

" Except as the Bank and the Borrower shall otherwise agree, Bonds shall be dated as hereinafter in this Section provided. "

(5) In Section 7.01, after the words " Guarantee Agreement ", where those words occur, the words, " the Indenture " are added.

(6) By the deletion of the second sentence of Section 7.02 and the substitution therefor of the following sentence :

" Such obligations shall not be subject to any prior notice to, demand upon or action against the Borrower or to any prior notice to or demand upon the Guarantor with regard to any default by the Borrower, and shall not be impaired by any of the following : any extension of time, forbearance or concession given to the Borrower; any assertion of, or failure to assert, or delay in asserting, any right, power or remedy against the Borrower or in respect of any security for the Loan;

any modification or amplification of the provisions of the Loan Agreement contemplated by the terms thereof; any modification or amplification of any other document related to the Loan or related to any security therefor; any failure of the Borrower to comply with any requirement of any law, regulation or order of the Guarantor or of any political subdivision or agency of the Guarantor.”

(7) By the deletion of subparagraph (j) of Section 7.04 and the substitution thereof of the following :

“(j) The provisions for arbitration set forth in this Section shall be in lieu of any other procedure for the determination of controversies between the parties to 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 Indenture or the Bonds, 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.”

(8) By the deletion of paragraph 9 of Section 10.01 and the substitution thereof of the following new paragraph, namely :

“9. The term ‘ Bonds ’ means bonds issued pursuant to the Indenture, with the guarantee of the Guarantor endorsed thereon as provided in the Loan Agreement and the Guarantee Agreement, such bonds to be secured by the first mortgage provided for in Section 7.01(c) of the Loan Agreement but not to create any other lien on the properties of the Borrower and its subsidiaries.”
