

No. 10673

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

**Loan Agreement—*Forest Plantations Project* (with annexed
General Conditions Applicable to Loan and Guarantee
Agreements). Signed at Washington on 7 November
1969**

Authentic text: English.

*Registered by the International Bank for Reconstruction and Development
on 18 August 1970.*

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

**Contrat d'emprunt — *Projet relatif aux plantations fores-
tières* (avec, en annexe, les Conditions générales appli-
cables aux contrats d'emprunt et de garantie). Signé à
Washington le 7 novembre 1969**

Texte authentique : anglais.

*Enregistré par la Banque internationale pour la reconstruction et le
développement le 18 août 1970.*

LOAN AGREEMENT¹

AGREEMENT, dated November 7, 1969, between REPUBLIC OF KENYA (hereinafter called the Borrower) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

Article I

GENERAL CONDITIONS; DEFINITIONS

Section 1.01. The parties to this Loan Agreement accept all the provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank, dated January 31, 1969,² with the same force and effect as if they were fully set forth herein (said General Conditions Applicable to Loan and Guarantee Agreements of the Bank being hereinafter called the General Conditions).

Section 1.02. Wherever used in this Loan Agreement, unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth and the term "Turbo Management Agreement" means an agreement made on October 14, 1966, between (i) the Agricultural Development Corporation, a corporation incorporated under the laws of the Borrower, (ii) the Government of the Republic of Kenya, and (iii) the East African Tanning Extract Company Limited, a limited liability company incorporated under the laws of the Borrower, by which agreement the East African Tanning Extract Company Limited was granted certain rights in the area where Part B of the Project defined in Schedule 3 to this Agreement will be executed.

Article II

THE LOAN

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions in this Loan Agreement set forth or referred to, an amount in various currencies equivalent to two million six hundred thousand dollars (\$2,600,000).

¹ Came into force on 13 July 1970, upon notification by the Bank to the Government of Kenya.

² See p. 220 of this volume.

Section 2.02. (a) 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.

(b) 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 Loan Agreement and in accordance with the allocation of the proceeds of the Loan set forth in Schedule 1 to this Agreement, as such allocation shall be modified from time to time pursuant to the provisions of such Schedule or by further agreement between the Borrower and the Bank.

Section 2.03. The Borrower shall be entitled to withdraw from the Loan Account in respect of the reasonable cost of goods or services required for the Project and to be financed under this Loan Agreement the equivalent of sixty-five per cent (65%) of such amounts as shall have been paid (or, if the Bank shall so agree, shall be required to meet payments to be made) for goods or services included in Categories I, II and III of the allocation of the proceeds of the Loan referred to in Section 2.02 of this Agreement; provided, however, that if there shall be an increase in the estimate of such payments for goods or services included in any of the Categories I, II and III, the Bank may by notice to the Borrower adjust the stated percentage applicable to such Category as required in order that withdrawals of the amount of the Loan then allocated to such Category and not withdrawn may continue *pro rata* with the payments remaining to be made for goods or services included in such Category.

Section 2.04. It is hereby agreed, pursuant to Section 5.01 of the General Conditions that withdrawals from the Loan Account under Categories I, II and III of the allocation of the proceeds of the Loan referred to in Section 2.02 of this Agreement may be made on account of payments in the currency of the Borrower, or for goods produced in, or services supplied from, the territories of the Borrower.

Section 2.05. 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 withdrawn from time to time.

Section 2.06. The Borrower shall pay interest at the rate of seven per cent (7%) per annum on the principal amount of the Loan withdrawn and outstanding from time to time.

Section 2.07. Interest and other charges shall be payable semi-annually on March 1 and September 1 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 2 to this Agreement.

Article III

USE OF PROCEEDS OF LOAN

Section 3.01. The Borrower shall apply the proceeds of the Loan in accordance with the provisions of this Loan Agreement to expenditures on Parts A, B and D of the Project, described in Schedule 3 to this Agreement.

Section 3.02. Except as the Bank shall otherwise agree, the following goods to be financed out of the proceeds of the Loan shall be procured as follows:

- (i) contracts amounting to \$15,000 equivalent or more for the purchase of tractors, dozers, graders, trucks and personnel vehicles will be awarded on the basis of international competitive bidding in accordance with the *Guidelines for Procurement under World Bank Loans and IDA Credits*, published by the Bank in February 1968, and in accordance with such other procedures supplementary thereto as are set forth in Schedule 4 to this Agreement; and
- (ii) contracts for the items listed in the preceding paragraph (i) amounting to less than \$15,000 equivalent and contracts for the purchase of fire tenders, plantation equipment and materials for construction of buildings and roads will be awarded on the basis of competitive procedures normally used by the Borrower, and in accordance with such other procedures as are set forth in Schedule 4 to this Agreement.

Section 3.03. Except as the Bank may otherwise agree, the Borrower shall cause all goods and services 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 Article VIII of the General Conditions.

Section 4.02. The Minister of the Borrower for the time being responsible for finance and such other person or persons as he shall appoint in writing are designated as authorized representatives of the Borrower for the purposes of Section 8.10 of the General Conditions.

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 silvicultural, administrative and financial practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the purpose.

(b) In carrying out the Project, the Borrower shall employ staff of adequate professional experience and competence. The Borrower shall accord to such staff the rank and employment terms necessary to secure their services. Among such staff the Borrower shall employ (i) a Project Manager who shall be directly responsible to the Borrower's Chief Conservator of Forests but who shall have free access to the Permanent Secretary of the Borrower's Ministry for the time being responsible for forestry, (ii) a Project Accountant, and (iii) a Divisional Forest Officer, Turbo, who shall be in charge of the execution of Part B of the Project, the holders of such three positions employed during the disbursement period of this Loan to be mutually acceptable to the Borrower and to the Bank.

(c) (i) The Borrower shall promptly terminate the Turbo Management Agreement in accordance with its terms or by mutual agreement with the parties thereto.

(ii) Upon termination of the Turbo Management Agreement the Borrower shall, in carrying out Part B of the Project, employ upon terms and conditions satisfactory to the Borrower and the Bank, qualified and experienced managing agents acceptable to the Borrower and the Bank for the purpose of clearing and preparing the land on which Part B of the Project will be executed.

(d) No later than two years after the date of this Loan Agreement the Borrower shall employ a marketing consultant acceptable to, and on terms and conditions satisfactory to the Borrower and the Bank for the purpose of carrying out the timber and pulpwood marketing survey included in Part C of the Project. The Borrower shall make available to such consultant any assistance required in carrying out such survey.

(e) The Borrower shall acquire no later than December 31, 1971 the ownership and control of any additional land required for the execution of Part B of the Project.

(f) Except for replacement plantings the Borrower shall not vary the plantings included in Part A and Part B of the Project by more than 10% of such plantings without the prior agreement of the Bank.

(g) The Borrower shall cause the plantations included in the Project, and all buildings, roads and equipment related to the Project, to be maintained and exploited in accordance with sound silvicultural, engineering and commercial practices and shall make available, promptly as needed, the funds, facilities, services and other resources required for the purpose.

(h) The Borrower shall furnish to the Bank, promptly upon their preparation, the work and procurement schedules for the Project and any modification subsequently made therein, in such detail as the Bank shall reasonably request.

(i) The Borrower shall cause the annual statements of expenditures and receipts relating to the Project to be audited no later than four months after the close of the Borrower's financial year by the Borrower's Comptroller and Auditor General, and shall promptly transmit to the Bank copies of the audited statements and the report of the Comptroller and Auditor General.

Section 5.02 (a) The Borrower and the Bank shall cooperate fully to ensure that the purposes of the Loan will be accomplished. To that end, the Borrower and the Bank shall from time to time, at the request of either party, exchange views through their representatives with regard to the performance by the Borrower of its obligations under the Loan Agreement, the administration, operations and financial condition with respect to the Project of the agency or agencies of the Borrower responsible for the carrying out of the Project or any part thereof, and other matters relating to the purposes of the Loan.

(b) The Borrower shall furnish or cause to be furnished to the Bank all such information as the Bank shall reasonably request concerning the expenditure of the proceeds of the Loan, the goods and services financed out of such proceeds, the Project, and the administration, operations and financial condition with respect to the Project of the agency or agencies of the Borrower responsible for the carrying out of the Project or any part thereof. Such information shall include information with respect to financial and economic conditions in the territories of the Borrower and the international balance of payments position of the Borrower.

(c) 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 of the obligations under the Loan Agreement by the Borrower or the agency or agencies of the Borrower responsible for the carrying out of the Project or any part thereof.

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

Section 5.03. The Borrower shall maintain records adequate to identify the goods and services financed out of the proceeds of the Loan, to disclose the use thereof in the Project, to record the progress of the Project and to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition with respect to the Project of the agency or agencies of the Borrower responsible for the carrying out of the Project or any part thereof and shall enable the Bank's representatives to inspect the Project, the goods financed out of the proceeds of the Loan, and any other records and documents relevant to the Project.

Section 5.04. Except as the Borrower and the Bank shall otherwise agree, the Borrower undertakes to insure or cause to be insured the imported goods to be financed out of the proceeds of the Loan against marine, transit and other hazards incident to the acquisition, transportation and delivery thereof to 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 5.05. It is the mutual intention of the Borrower and the Bank that no other external debt shall enjoy any priority over the Loan by way of a lien on governmental assets. To that end, the Borrower undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Borrower as security for any external debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds, and that in the creation of any such lien express provision will be made to that effect; provided, however, that the foregoing provisions of this Section shall not apply to: (i) any lien created on property at the time of purchase thereof, solely as security for the payment of the purchase price of such property; (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date; or (iii) any

charges on the General Fund of the East African Community (the Community) securing a debt of the Community where the amount of debt service on such debt in any financial year together with other debt service on other debt of the Community payable from such General Fund in such financial year do not exceed 2% of the average of the income tax collected by the East African Income Tax Department and of customs duties and excise duties collected by the East African Customs and Excise Department in the three financial years preceding such incurrence. For purposes of this sub-section, "debt service" shall include payments of the principal of, and interest and other charges on, debt; and any reference to incurring of debt shall include the assumption and guarantee of debt and any renewal, extension, or modification of the terms of the debt or of the assumption or guarantee thereof.

As used in this Section, the term "assets of the Borrower" includes assets of the Borrower or of any of its political subdivisions, or of any agency of the Borrower or of any such political subdivision, including the Central Bank of Kenya, or any other institution performing the functions of a central bank; and the term "external debt" means any debt payable in any medium other than currency of the Borrower, whether such debt is or may become payable absolutely or at the option of the creditor in such other medium, save that in the case of a debt of the Community, the term external debt means any debt payable in any medium other than the currencies of the members of the Community.

Section 5.06. 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, and free from all restrictions, imposed by the Borrower; 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 Borrower.

Section 5.07. The Loan Agreement and the Bonds shall be free from any taxes that shall be imposed by the Borrower on or in connection with the execution, issue, delivery or registration thereof and the Borrower shall pay all such 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.

Article VI

REMEDIES OF THE BANK

Section 6.01. If any event specified in Section 7.01 of the General Conditions shall occur and shall continue for the period, if any, therein set forth, then at any subsequent time during the continuance thereof, the Bank, at its option, may by notice to the Borrower declare the principal of the Loan and of all the Bonds then outstanding to be due and payable immediately together with the interest and other charges thereon and upon any such declaration such principal, interest and charges shall become due and payable immediately, anything to the contrary in this Loan Agreement or in the Bonds notwithstanding.

Article VII

EFFECTIVE DATE; TERMINATION

Section 7.01. The following events are specified as additional conditions to the effectiveness of this Loan Agreement within the meaning of Section 11.01 (c) of the General Conditions:

- (a) The Borrower shall have employed (i) the Project Manager, (ii) the Project Accountant, and (iii) the Divisional Forest Officer, Turbo, in charge of the execution of Part B of the Project, as required by the provisions of Section 5.01 (b) of this Agreement; and
- (b) The Turbo Management Agreement, together with all rights and obligations of the three parties thereunder, shall have terminated.

Section 7.02. The following is specified as an additional matter, within the meaning of Section 11.02 (c) of the General Conditions, to be included in the opinion or opinions to be furnished to the Bank: that the Turbo Management Agreement, together with all rights and obligations of the three parties thereunder, shall have terminated.

Section 7.03. The date of February 10, 1970 is hereby specified for the purposes of Section 11.04 of the General Conditions.

Article VIII

MISCELLANEOUS

Section 8.01. The Closing Date shall be December 31, 1975 or such other date as shall be agreed between the Borrower and the Bank.

Section 8.02. The Minister of the Borrower for the time being responsible for finance is designated as representative of the Borrower for the purposes of Section 10.03 of the General Conditions.

Section 8.03. The following addresses are specified for the purposes of Section 10.01 of the General Conditions:

For the Borrower:

The Treasury
P.O. Box 30007
Nairobi, Kenya

Cable address:

Finance
Nairobi

For the Bank:

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

Cable address:

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 to be delivered in the District of Columbia, United States of America, as of the day and year first above written.

Republic of Kenya:

By LEONARD OLIVER KIBINGE
Authorized Representative

International Bank for Reconstruction and Development:

By J. BURKE KNAPP
Vice President

SCHEDULE 1

ALLOCATION OF PROCEEDS OF LOAN

<i>Category</i>	<i>Amounts Expressed in Dollar Equivalent</i>
I. Expenditures on Part A of the Project	1,520,000
II. Expenditures on Part B of the Project	730,000
III. Marketing Survey	50,000
IV. Unallocated	<u>300,000</u>
TOTAL	<u>2,600,000</u>

REALLOCATION UPON CHANGE IN COST ESTIMATES

1. If the estimate of the cost of the items included in any of the Categories I to III shall decrease, the amount of the Loan, then allocated to, and no longer required for, such Category will be reallocated by the Bank to Category IV.

2. If the estimate of the cost of the items included in any of the Categories I to III shall increase, an amount equal to 65% of such increase will be allocated by the Bank, at the request of the Borrower, to such Category from Category IV, subject, however, to the requirements for contingencies, as determined by the Bank in respect of the cost of the items in the other categories.

SCHEDULE 2

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>
September 1, 1979	50,000	September 1, 1987	85,000
March 1, 1980	50,000	March 1, 1988	85,000
September 1, 1980	50,000	September 1, 1988	90,000
March 1, 1981	55,000	March 1, 1989	90,000
September 1, 1981	55,000	September 1, 1989	95,000
March 1, 1982	55,000	March 1, 1990	100,000
September 1, 1982	60,000	September 1, 1990	100,000
March 1, 1983	60,000	March 1, 1991	105,000
September 1, 1983	65,000	September 1, 1991	110,000
March 1, 1984	65,000	March 1, 1992	115,000
September 1, 1984	65,000	September 1, 1992	115,000
March 1, 1985	70,000	March 1, 1993	120,000
September 1, 1985	70,000	September 1, 1993	125,000
March 1, 1986	75,000	March 1, 1994	130,000
September 1, 1986	75,000	September 1, 1994	135,000
March 1, 1987	80,000		

* To the extent that any portion of the Loan is repayable in a currency other than dollars (see General Conditions, Section 4.02), 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 portion of the principal amount of the Loan pursuant to Section 3.05 (b) of the General Conditions or on the redemption of any Bond prior to its maturity pursuant to Section 8.15 of the General Conditions:

<i>Time of Prepayment of Redemption</i>	<i>Premium</i>
Not more than three years before maturity	3/4%
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	2 3/4%
More than eleven years but not more than sixteen years before maturity	4 1/4%
More than sixteen years but not more than twenty-one years before maturity	5 1/2%
More than twenty-one years but not more than twenty-three years before maturity	6 1/2%
More than twenty-three years before maturity	7%

SCHEDULE 3

DESCRIPTION OF THE PROJECT

The Project consists of:

Part A

The planting within the six years 1970 to 1975 inclusive of approximately 48,000 acres of softwoods for saw-wood, and the maintenance of these plantations until final harvest. The plantings will be made in the Forest Divisions of Eldoret, Londiani and Elburgon as follows:

(1) *Eldoret Division*: In each of the six years a total of approximately 3,550 acres in the Forest Districts of Kaptagat, Kipkabus, Nabkoi/Timboroa, Nandi and North Tinderet.

(2) *Londiani Division*: In each of the six years a total of approximately 2,450 acres in the Forest Districts of Lembus, Sorget, Maji Mazuri, Sabatia, Esageri, Makutano, Londiani and Molo.

(3) *Elburgon Division*: In each of the six years a total of approximately 2,000 acres in the Forest Districts of Eastern Mau and Bahati.

Part B

The planting within the six years 1970 to 1975 inclusive of approximately 23,000 acres of softwoods for pulp, and the maintenance of these plantations until final harvest. A minimum of approximately 18,000 acres out of such 23,000 acres of softwoods will be planted in the Turbo Forest Division, the remaining part in areas to be agreed upon by the Borrower and the Bank.

Part C

The maintenance until final harvest of approximately 7,300 acres of softwoods for pulp previously planted in the Turbo Forest Division.

Part D

The carrying out of a marketing survey to determine the domestic and export prospects for marketing Kenyan timber and pulpwood.

SCHEDULE 4

PROCUREMENT

1. With respect to all contracts which are to be awarded on the basis of international competitive bidding pursuant to Section 3.02 (i) of this Agreement, the following procedures will be observed:

(a) Individual contracts shall be of a size sufficiently large so as not to discourage potential bidders or to impede an economical and diligent carrying out of the Project.

(b) Before inviting tenders the Borrower shall submit to the Bank for its approval the proposed standard bid invitation documents and a description of tendering procedures.

(c) Unless otherwise agreed with the Bank, with respect to each contract involving an amount of U.S. \$15,000 equivalent or more the Borrower shall submit to the Bank for approval prior to awarding the contract the summary of the bids received, an analysis report and recommendations, and a justification of the proposal for awarding the contract.

2. With respect to contracts which are to be awarded on the basis of competitive procedures normally used by the Borrower pursuant to Section 3.02 (ii) of this Agreement, the Borrower shall submit to the Bank at the time the award is made a summary of bids or quotations, an analysis report and recommendations, a brief justification for making the award, and, as soon as the contract has been signed and prior to the submission to the Bank of the first application for withdrawal of funds from the Loan Account, the Borrower will send a copy thereof to the Bank together with a copy of the *Procès-Verbal* of the public opening of the tenders.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

GENERAL CONDITIONS, DATED 31 JANUARY 1969

GENERAL CONDITIONS APPLICABLE TO LOAN AND GUARANTEE AGREEMENTS

[Not published herein. See United Nations, Treaty Series, vol. 691, p. 300.]