

No. 11450

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

Guarantee Agreement—*Sabah Ports Project* (with annexed General Conditions Applicable to Loan and Guarantee Agreements and Loan Agreement between the Bank and the Sabah Ports Authority). Signed at Washington on 30 June 1971

Authentic text: English.

Registered by the International Bank for Reconstruction and Development on 16 December 1971.

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

Contrat de garantie—*Projet portuaire du Sabah* (avec, en annexe, les Conditions générales applicables aux contrats d'emprunt et de garantie et le Contrat d'emprunt entre la Banque et la Sabah Ports Authority). Signé à Washington le 30 juin 1971

Texte authentique: anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 16 décembre 1971.

GUARANTEE AGREEMENT¹

AGREEMENT, dated June 30, 1971, between MALAYSIA (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by the Loan Agreement of even date herewith² between the Bank and Sabah Ports Authority (hereinafter called the Borrower) the Bank has agreed to make to the Borrower a loan in various currencies equivalent to sixteen million one hundred thousand dollars (\$16,100,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee the obligations of the Borrower in respect of such loan as hereinafter provided; and

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

NOW THEREFORE the parties hereto hereby agree as follows:

Article I. GENERAL CONDITIONS; DEFINITIONS

Section 1.01. The parties to this Agreement accept all the provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank dated January 31, 1969,³ with the same force and effect as if they were fully set forth herein, subject, however, to the modifications thereof set forth in Section 1.01 of the Loan Agreement (said General Conditions Applicable to Loan and Guarantee Agreements, as so modified, being hereinafter called the General Conditions).

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth.

Article II. GUARANTEE; BONDS; PROVISION OF FUNDS

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

Section 2.02. The Guarantor shall endorse, in accordance with the provisions of the General Conditions, its guarantee on the Bonds to be executed and delivered by the Borrower. The Minister of Finance of the

¹ Came into force on 24 August 1971, upon notification by the Bank to the Government of Malaysia.

² See p. 225 of this volume.

³ *Ibid.*

Guarantor and such other person or persons as he shall appoint in writing are designated as authorized representatives of the Guarantor for the purposes of Section 8.10 of the General Conditions.

Section 2.03. Without limitation or restriction upon the provisions of Section 2.01 of this Agreement, the Guarantor specifically undertakes, whenever there is reasonable cause to believe that the funds available to the Borrower will be inadequate to meet the estimated expenditures required for the carrying out of the Project, to make satisfactory arrangements, promptly to provide the Borrower or cause the Borrower to be provided with such funds as are needed to meet such expenditures.

Article III. OTHER COVENANTS

Section 3.01. (a) It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan or the Bonds by way of a lien on governmental assets.

(b) To that end the Guarantor (i) represents that at the date of this Agreement no lien exists on any governmental assets as security for any external debt except as otherwise disclosed in writing by the Guarantor to the Bank, and (ii) undertakes that if any such lien shall be created, it 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 in the creation of any such lien express provision will be made to that effect. The Guarantor shall promptly inform the Bank of the creation of any such lien.

(c) The foregoing representation and undertaking shall not apply to: (i) any lien created on property, at the time of purchase thereof, solely as security for payment of the purchase price of such property; and (ii) 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 “governmental assets” means: (i) assets of the Guarantor; (ii) assets of any statutory authority of the Guarantor, including assets of any state or any political subdivision of the Guarantor; (iii) assets of the Bank Negara Malaysia or any institution performing the functions of a central bank for the Guarantor, and (iv) any right, interest or share of the Guarantor in the Currency Fund and Currency Surplus Fund administered under the Malaya British Borneo Currency Agreement.

Section 3.02. Subject to its constitutional limitations, the Guarantor covenants that it will not take, or cause or permit any of its statutory authorities, states or political subdivisions or any agency of any such statutory authority, state or political subdivisions to take any action which would prevent or interfere with the performance by the Borrower of its obligations contained in the Loan Agreement and will take or cause to be taken all reasonable action necessary or appropriate within its power to enable the Borrower to perform such obligations.

Article IV. CONSULTATION AND INFORMATION

Section 4.01. The Guarantor and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end the Guarantor and the Bank shall from time to time, at the request of either party: (i)

exchange views through their representatives with regard to the performance of their respective obligations under the Guarantee Agreement and other matters relating to the purposes of the Loan; and (ii) 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, including its balance of payments, and the external debt of the Guarantor, of any of its political subdivisions and of any agency of the Guarantor or of any such political subdivision.

Section 4.02. (a) The Guarantor shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

(b) 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.

Article V. TAXES AND RESTRICTIONS

Section 5.01. 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 foregoing 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 5.02. The Guarantee Agreement, the Loan Agreement, any instrument made pursuant to Section 3.01 of this Agreement and the Bonds shall be free from any taxes that shall be imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof and the Guarantor shall, in respect of any instrument made pursuant to such Section 3.01, pay all such taxes, if any, imposed under the laws of any other country or countries.

Section 5.03. The payment of the principal of, and interest and other charges on, the Loan and the Bonds shall be free from all restrictions, regulations, controls or moratoria of any nature imposed under the laws of the Guarantor or laws in effect in its territories.

Article VI. REPRESENTATIVE OF THE GUARANTOR; ADDRESSES

Section 6.01. The Ministry of the Guarantor is designated as representative of the Guarantor for the purposes of Section 10.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 10.01 of the General Conditions:

For the Guarantor:

Ministry of Finance,
The Treasury
Kuala Lumpur, Malaysia

Cable address:

Treasury
Kuala Lumpur

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 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.

Malaysia:

By M. BEN HARON
Authorized Representative

International Bank for Reconstruction and Development:

By J. BURKE KNAPP
Vice President

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.*]

LOAN AGREEMENT

AGREEMENT, dated June 30, 1971, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank) and SABAH PORTS AUTHORITY (hereinafter called the Borrower).

Article I. GENERAL CONDITIONS; DEFINITIONS

Section 1.01. The parties to this Agreement accept all the provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank, dated January 31, 1969,¹ with the same force and effect as if they were fully set forth herein, subject, however, to the deletion of Section 5.01 thereof and to the amendment of Section 6.02 (i) thereof to read as follows: "Any event specified in paragraph (e) or (f) of Section 7.01 shall have occurred." (said General Conditions Applicable to Loan and Guarantee Agreements of the Bank, as so modified, being hereinafter called the General Conditions).

¹ See above.

Section 1.02. Whenever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "State" means the State of Sabah; and

(b) "Enactment" means "the Sabah Ports Authority Enactment, 1967" and all amendments thereto as in force at the date of this Agreement.

Article II. THE LOAN

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions in the Loan Agreement set forth or referred to, an amount in various currencies equivalent to sixteen million one hundred thousand dollars (\$16,100,000).

Section 2.02. The amount of the Loan may be withdrawn from the Loan Account in accordance with the provisions of Schedule 1 to this Agreement, as such Schedule shall be amended from time to time, for expenditures made (or, if the Bank shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project described in Schedule 2 to this Agreement and to be financed under the Loan Agreement; provided, however, that, except as the Bank shall otherwise agree, no withdrawals shall be made (i) on account of expenditures in the territories of any country which is not a member of the Bank (other than Switzerland) or for goods produced in, or services supplied from, such territories, or (ii) in respect of Parts A (ii) and B of the Project described in Schedule 2 to this Agreement until the jurisdiction for operating the port of Sandakan and all property, powers and rights (as determined by the Bank) required therefor shall have been vested in the Borrower.

Section 2.03. Except as the Bank shall otherwise agree, the goods and services (other than services of consultants) required for the Project and to be financed out of the proceeds of the Loan, shall be procured on the basis of international competition under procedures consistent with the *Guidelines for Procurement under World Bank Loans and IDA Credits*, published by the Bank in August 1969, as revised in May 1971 (hereinafter called the Guidelines), and in accordance with, and subject to, the provisions set forth in Schedule 4 to this Agreement.

Section 2.04. The Closing Date shall be June 30, 1975 or such other date as shall be agreed between the Bank and 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 and one quarter per cent ($7\frac{1}{4}\%$) 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 April 1 and October 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 3 to this Agreement.

Section 2.09. 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 2.10. The Chairman of the Borrower 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 III. EXECUTION OF THE PROJECT

Section 3.01. The Borrower shall carry out the Project with due diligence and efficiency and in conformity with sound administrative, financial and engineering practices.

Section 3.02. In order to assist the Borrower in the preparation of detailed engineering, tender documents, and supervision of construction of the Project and in the collection of soil and hydrographic and other data associated therewith, the Borrower shall employ engineering consultants acceptable to the Bank upon terms and conditions, including provision for training engineering personnel nominated by the Borrower during the period of construction of the Project, satisfactory to the Bank.

Section 3.03. In carrying out Part A of the Project, the Borrower shall employ contractors in accordance with the procedures set forth in Schedule 4 to this Agreement.

Section 3.04. (a) The Borrower undertakes to insure, or make adequate provision for the insurance of, the imported goods to be financed out of the proceeds of the Loan against 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.

(b) Except as the Bank shall otherwise agree, the Borrower shall cause all goods and services financed out of the proceeds of the Loan to be used exclusively for the Project.

Section 3.05. (a) The Borrower shall furnish to the Bank, promptly upon their preparation, the plans, specifications, consultants' reports, contract documents and construction and procurement schedules, for the Project, and any material modifications thereof or additions thereto, in such detail as the Bank shall reasonably request.

(b) The Borrower: (i) shall maintain records adequate to record the progress of the Project (including the cost thereof) and to identify the goods and services financed out of the proceeds of the Loan, and to disclose the use thereof in the Project; (ii) shall enable the Bank's representatives to inspect the Project, the goods financed out of the proceeds of the Loan and any relevant records and documents; and (iii) shall furnish to the Bank all such information as the Bank shall reasonably request concerning the Project, the expenditure of the proceeds of the Loan and the goods and services financed out of such proceeds.

Section 3.06. The Borrower shall take all such action as shall be necessary to (i) acquire not later than July 31, 1971 all such property, land, and rights in respect of land as shall be required for carrying out the Project and shall furnish to the Bank, promptly after such acquisition, evidence satisfactory to the Bank that all such property, land and rights in respect of land are vested in it and are available for purposes related to the Project and, without limiting the generality of the foregoing, (ii) acquire not later than July 31, 1971 all property, land, and rights in respect of land in the present port of Sandakan and (iii) acquire such property, land, and rights in respect of land as shall be needed for the future expansion of the ports of Kota Kinabalu and Sandakan to the extent that, and on the dates on which, such needs can reasonably be foreseen during the period of carrying out the Project and (iv) take all action within its power to cause the access roads serving the new port of Sandakan to be completed prior to the date on which the new port comes into operation.

Article IV. MANAGEMENT AND OPERATIONS OF THE BORROWER

Section 4.01. The Borrower shall cause the facilities, equipment, machinery or other property necessary or useful in the operation of all the ports vested in it from time to time to be operated, maintained, renewed and repaired in accordance with sound engineering and management practices.

Section 4.02. The Borrower shall take all steps necessary to ensure that the operation of all the ports vested in it from time to time shall at all times be conducted, their affairs managed, their future investments planned and a sound financial situation maintained in accordance with sound administrative, financial and engineering practices and under the direction of competent and experienced management.

Section 4.03. 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 amounts as shall be consistent with sound port management practice.

Section 4.04. The Borrower shall consult with the Bank (a) prior to introducing any material changes in its organization or when replacement of any of its key personnel is under consideration to enable the Bank to determine whether such changes would adversely affect the Borrower's management and operations, and shall thereafter review with the Bank the steps which may be required in order to remedy the situation; and (b) prior to any proposed change in the appointment to the position of the Borrower's Chairman and General Manager.

Article V. FINANCIAL COVENANTS

Section 5.01. The Borrower shall maintain records adequate to reflect in accordance with consistently maintained sound accounting practices its operations and financial condition.

Section 5.02. The Borrower shall: (i) have its accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with sound auditing principles consistently applied, by independent auditors acceptable to the Bank; (ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year, (A) certified copies of its financial statements for such year as so audited and (B) the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested; and (iii) furnish to the Bank such other information concerning the accounts and financial statements of the Borrower and the audit thereof as the Bank shall from time to time reasonably request.

Section 5.03. (a) The Borrower represents that at the date of this Agreement no lien exists on any of its assets as security for any debt.

(b) The Borrower undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Borrower as security for any debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds, and that in the creation of any such lien express provision will be made to that effect; provided, however, that the foregoing provisions of this Section shall not apply to: (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; or (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after the date on which it is originally incurred.

Section 5.04. Except as the Bank shall otherwise agree, the Borrower shall by a date not later than January 1, 1973, introduce a cost accounting system acceptable to the Bank in respect of the various ports which it operates, and promptly thereafter do everything within its power to ensure that its dues and rates shall be reasonably based on the cost of the services to which such dues and rates relate.

Section 5.05. Except with the prior approval of the Bank, the Borrower shall not: (i) prior to the completion of the Project undertake or execute any project or development (other than the Project), or make any other investment, which would result in estimated aggregate capital expenditures of the Borrower exceeding \$500,000 equivalent in any fiscal year, and (b)¹ at any time incur any debt, unless its net cash generation from operations for the fiscal year immediately preceding such incurrence or

¹ Should read "(ii)"—Devrait se lire "(ii)".

a later twelve-month period ended prior to such incurrence, whichever is the greater, shall not be less than 1.75 times the maximum debt service requirements for any succeeding fiscal year on all debt including the debt to be incurred. For the purposes of this Section:

- (i) the term “debt” means all debt of the Borrower including debt for service of which the Borrower is responsible, maturing by its terms more than one year after the date on which it was originally incurred;
- (ii) debt shall be deemed to be incurred on the date of execution and delivery of a contract, loan agreement or other instrument providing for such debt;
- (iii) the term “net cash generation from operations” means gross revenues from all sources, adjusted to take account of the Borrower’s dues and rates in effect at the time of the incurrence of debt even though they were not in effect during the fiscal year or twelve-month period to which such revenues relate, less operational expenses including administrative expenses, taxes (if any), and adequate maintenance, but before deduction for depreciation and debt service requirements;
- (iv) the term “debt service requirements” means the aggregate amount of amortization of, and interest and other charges on, debt; and
- (v) whenever it shall be necessary to value, in terms of the currency of the Guarantor, 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 or, if such other currency is not so obtainable, at the rate of exchange that will be reasonably determined by the Bank.

Section 5.06. Upon completion of the Project the Borrower and the Bank shall periodically review the Borrower’s cash requirements so as to determine the Borrower’s fiscal policies.

Section 5.07. Except as the Bank shall otherwise agree, the Borrower shall take all such measures including, but not limited to adjustment of its dues and rates as shall be required to provide the Borrower with net operating revenues sufficient to yield an annual rate of return on the net value of the Borrower’s fixed assets in operation of not less than 5% during fiscal year 1975, 6% during fiscal year 1976 and 7% thereafter. For the purposes of this Section:

- (i) the term “net operating revenue” means the difference between (A) gross operating revenues excluding port charges for timber shipped at anchorage and (B) operating, administrative and maintenance expenses, including straight-line depreciation at an average rate of not less than 3.5% of the depreciable fixed assets, and taxes (if any), but excluding interest and other charges on debt, and dividends on equity capital;
- (ii) the net value of fixed assets in operation shall be the gross value of such assets, as revalued from time to time in accordance with sound and consistently maintained methods of valuation acceptable to the Bank, less the amount of accumulated depreciation;
- (iii) the annual return shall be calculated in respect of each fiscal year of the Borrower by relating the amount of net operating revenue in such year to the average of the net values of the Borrower’s fixed assets in operation at the beginning and the end of such year.

Article VI. CONSULTATION; INFORMATION AND INSPECTION

Section 6.01. The Bank and the Borrower shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end, the Bank and the Borrower shall from time to time, at the request of either party:

- (a) exchange views through their representatives with regard to the performance of their respective obligations under the Loan Agreement, the administration, operations and financial condition of the Borrower and other matters relating to the purpose of the Loan; and
- (b) furnish to the other all such information as it shall reasonably request with regard to the general status of the Loan.

Section 6.02. The Bank and the Borrower shall promptly inform each other 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 either of them of its obligations under the Loan Agreement.

Section 6.03. The Borrower shall enable the Bank's representatives to inspect all installations, sites, works, buildings, property and equipment of the Borrower and any relevant records and documents.

Article VII. TAXES

Section 7.01. The Borrower shall pay or cause to be paid all taxes, if any, imposed on or in connection with the execution, issue, delivery or registration of the Loan Agreement, any instrument made pursuant to Section 5.03 of this Agreement, the Guarantee Agreement¹ or the Bonds, or the payment of principal, interest or other charges thereunder; provided, however, that the provisions of this Section shall not apply to taxation, under the laws of the Guarantor or laws in effect in its territories, 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.

Article VIII. REMEDIES OF THE BANK; TERMINATION

Section 8.01. If any event specified in Section 7.01 of the General Conditions or in Section 8.02 of this Agreement 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 and the Guarantor 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 the Loan Agreement or in the Bonds notwithstanding.

Section 8.02. For the purposes of Sections 6.02 and 7.01 of the General Conditions, the following additional event is specified: The Enactment shall have been amended, repealed, suspended or abrogated so as to have an adverse effect on the Project or the operations of the Borrower.

Section 8.03. The date of August 20, 1971 is hereby specified for the purposes of Section 11.04 of the General Conditions.

Article IX. ADDRESSES

Section 9.01. The following addresses are specified for the purposes of Section 10.01 of the General Conditions:

For the Bank:

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

¹ See p. 222 of this volume.

Cable address:

Intbafrad
Washington, D.C.

For the Borrower:

Sabah Ports Authority
P.O. Box 1430
Kota Kinabalu, Sabah, Malaysia

Cable address:

Saports
Kota Kinabalu

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this 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.

International Bank for Reconstruction and Development:

By J. BURKE KNAPP
Vice President

Sabah Ports Authority:

By HERMAN J. LUPING
Chairman

KONG YIN LOONG
Member

S. LIM THIEN KWANG
Member

SCHEDULE 1

WITHDRAWAL OF THE PROCEEDS OF THE LOAN

1. The table below sets forth the categories of items to be financed out of the proceeds of the Loan, the allocation of amounts of the Loan to each category and the percentage of eligible expenditures so to be financed in each category:

<i>Category</i>	<i>Amount of the Loan Allocated (Expressed in Dollar Equivalent)</i>	<i>% of Expenditures to be financed</i>
I. Civil works	11,453,000	73% of total expenditures (representing the estimated foreign expenditure component)
II. Cargo Handling Equipment	573,000	100% of foreign expenditures
III. Engineering Fees	657,000	100% of foreign expenditures
IV. Soil investigations and hydrographic studies	412,000	60% of total expenditures (representing the estimated foreign expenditure component)

<i>Category</i>	<i>Amount of the Loan Allocated (Expressed in Dollar Equivalent)</i>	<i>% of Expenditures to be financed</i>
V. Training of port personnel	60,000	100% of foreign expenditures
VI. Unallocated	2,945,000	
TOTAL	<u>16,100,000</u>	

2. For the purposes of this Schedule:

- (a) the term “foreign expenditures” means expenditures for goods produced in, or services supplied from, the territories, and in the currency, of any member of the Bank (other than the Guarantor) or of Switzerland; and
- (b) the term “total expenditures” means the aggregate of foreign expenditures and of expenditures for goods produced in, or services supplied from, the territories of the Guarantor.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of:

- (a) expenditures prior to the date of this Agreement, except that withdrawals may be made in respect of Categories III and IV on account of expenditures incurred after September 1, 1970, in an aggregate amount not exceeding the equivalent of \$300,000; and
- (b) payments for taxes imposed under the laws of the Guarantor or laws in effect in its territories on goods or services, or on the importation, manufacture, procurement or supply thereof.

4. Notwithstanding the allocation of an amount of the Loan set forth in the second column of the table in paragraph 1 above:

- (a) if the estimate of the expenditures under any Category shall decrease, the amount of the Loan then allocated to such Category and no longer required therefor will be reallocated by the Bank by increasing correspondingly the unallocated amount of the Loan; and
- (b) if the estimate of the expenditures under any Category shall increase, a corresponding amount will be allocated by the Bank, at the request of the Borrower, to such Category from the unallocated amount of the Loan, subject, however, to the requirements for contingencies, as determined by the Bank, in respect of any other expenditures.

5. Notwithstanding the percentages set forth in the third column of the table in paragraph 1 above, if the estimate of expenditure under Category I shall increase and no proceeds of the Loan are available for reallocation to such category, the Bank may by notice to the Borrower, adjust the percentage then applicable to such expenditure in order that further withdrawals under such category may continue until all expenditures thereunder shall have been made.

SCHEDULE 2

DESCRIPTION OF THE PROJECT

The Project consists of the following parts:

A. *Civil Works*

(i) At Kota Kinabalu, the construction of: a deep-water berth 700 ft long with an alongside depth of 30 ft at low water ordinary spring tide (LWOST) for ocean-going

vessels; two berths each about 400 ft long with alongside depths of 24 ft at LWOST for feeder service vessels; one berth, 250 ft long with an alongside depth of 18 ft at LWOST for coasters; and one transit shed of 70,000 sq ft and adequate open storage areas, all ancillary services, office buildings and workshops.

(ii) At Sandakan, the construction of: a deep-water berth 700 ft long with an alongside depth of 30 ft at LWOST for ocean-going vessels; two berths each about 400 ft long with alongside depths of 24 ft at LWOST for feeder service vessels; one berth, 250 ft long with an alongside depth of 18 ft at LWOST for coasters; and one transit shed of 90,000 sq ft and adequate open storage areas, all ancillary services, office buildings and workshops.

B. *Cargo-Handling Equipment*

At Kota Kinabalu, Sandakan, Tawau and three minor ports comprising: forklifts; tractors; trailers; and mobile cranes.

C. *Consultant Services and Soil Investigations and Hydrographic Studies*

(i) Consultant services for detailed engineering, preparation of tender documents and supervision of construction, and training of engineers during construction; and

(ii) Further soil investigations and hydrographic measurements to be undertaken concurrently with the detailed engineering in order to incorporate the results in the final designs.

D. *Training of port personnel*

The provision of training of all port operational and management personnel by port experts—to start in the existing ports—aimed at increasing efficiency of port operations and utilization of modern cargo-handling equipment.

The Project is expected to be completed by December 31, 1974.

SCHEDULE 3

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>
October 1, 1975	275,000	October 1, 1983	485,000
April 1, 1976	285,000	April 1, 1984	505,000
October 1, 1976	295,000	October 1, 1984	520,000
April 1, 1977	305,000	April 1, 1985	540,000
October 1, 1977	315,000	October 1, 1985	560,000
April 1, 1978	330,000	April 1, 1986	580,000
October 1, 1978	340,000	October 1, 1986	600,000
April 1, 1979	350,000	April 1, 1987	625,000
October 1, 1979	365,000	October 1, 1987	645,000
April 1, 1980	380,000	April 1, 1988	670,000
October 1, 1980	390,000	October 1, 1988	695,000
April 1, 1981	405,000	April 1, 1989	720,000
October 1, 1981	420,000	October 1, 1989	745,000
April 1, 1982	435,000	April 1, 1990	770,000
October 1, 1982	450,000	October 1, 1990	800,000
April 1, 1983	470,000	April 1, 1991	830,000

* 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 or Redemption</i>	<i>Premium</i>
Not more than three years before maturity	1 ¹ / 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	3 ¹ / ₂ %
More than eleven years but not more than sixteen years before maturity	5 ¹ / ₄ %
More than sixteen years but not more than eighteen years before maturity	6 ¹ / ₄ %
More than eighteen years before maturity	7 ¹ / ₄ %

SCHEDULE 4

PROCUREMENT

1. Unless the Bank shall otherwise agree, the procedure outlined below shall be followed for all contracts for civil works estimated to cost \$100,000 equivalent or more and for all contracts for cargo handling equipment estimated to cost \$50,000 equivalent or more:

(a) Prequalification, as described in paragraph 1.3 of the Guidelines shall be employed for civil works bidders.

(b) Separate contracts shall be awarded for civil works at Kota Kinabalu and at Sandakan; bids for both contracts shall be invited and opened simultaneously and bidders may bid for either or both contracts.

(c) The Borrower shall, before qualification is invited, inform the Bank in detail of the procedure to be followed and shall introduce such modifications in such procedure as the Bank shall reasonably request. The list of prequalified bidders, together with a statement of their qualifications and of the reasons for the exclusion of any applicant for prequalification, shall be furnished by the Borrower to the Bank for its comments before the applicants are notified and the Borrower shall make such additions or deletions from the said list as the Bank shall reasonably request.

(d) Before bids are invited, the Borrower shall furnish to the Bank, for its comments, the text of the invitations to bid and the specifications and other bidding documents, together with a description of the advertising procedures to be followed for the bidding, and shall make such modifications in the said documents or procedure as the Bank shall reasonably request. Any further material modification to the bidding documents shall require the Bank's concurrence before it is issued to the prospective bidders.

(e) After bids have been received and evaluated, the Borrower shall, before the award is made, inform the Bank of the name of the bidder to whom it intends to award the contract and shall furnish to the Bank, in sufficient time for its review, a detailed report, by the consultants referred to in Section 3.02 of this Agreement, on the evaluation and comparison of the bids received, together with the recommendations for award of the said consultants, and the reasons for the intended award. The Bank shall promptly inform the Borrower whether it has any objection to the intended award and shall state the reasons for any objections it may have.

(f) If the contract shall be awarded over the Bank's reasonable objection, or if its terms and conditions shall, without the Bank's concurrence, materially differ from those on which bids were asked, no expenditure thereunder shall be financed out of the proceeds of the Loan.

g) Two copies of the contract shall be furnished to the Bank promptly after its execution and prior to the submission to the Bank of the first application for withdrawal of funds from the Loan Account in respect of any such contract.

2. For the purpose of evaluating bids for cargo handling equipment estimated to cost \$50,000 equivalent or more included in Category II of the table set out in paragraph 1 of Schedule 1 to this Agreement, bid prices shall be determined and compared in accordance with the following rules:

(a) The term "Local Bid" means a bid submitted by a manufacturer established in the territories of the Guarantor for goods manufactured or processed to a substantial extent (as reasonably determined by the Bank) in such territories; any other bid shall be deemed to be a "Foreign Bid";

(b) The bid price under a Local Bid shall be the sum of the following amounts:

- (i) the ex-factory price of such goods, and
- (ii) freight, insurance and other costs of delivering such goods to the place of use or installation;

(c) For the purpose of comparing any Foreign Bid with any Local Bid, the bid price under a Foreign Bid shall be the sum of the following amounts:

- (i) the c.i.f. landed price of such goods delivered to the place of use or installation;
- (ii) the amount of any taxes on the importation of such goods into the territories of the Guarantor which generally apply to non-exempt importers, or 15% of the amount specified in (i) above, whichever shall be the lower.

3. With respect to all contracts for civil works estimated to cost less than \$100,000 equivalent and for cargo handling equipment estimated to cost less than \$50,000 equivalent the Borrower shall furnish to the Bank, promptly after their execution and prior to the submission to the Bank of the first application for withdrawal of funds from the Loan Account in respect of any such contract, copies of all documents including the invitation to bid, the tender documents and the bid analysis and evaluation, and two conformed copies of such contract. The Bank shall promptly inform the Borrower if it finds that the award of the contract is not consistent with the Guidelines (excluding the provisions for international competitive bidding included therein) or with the Loan Agreement and, in such event, no expenditure under such contract shall be financed out of the proceeds of the Loan.

4. (a) With respect to the additional soil investigations and hydrographical studies required in conjunction with the detailed engineering valued at less than \$50,000 equivalent when these are carried out by the State's PWD and/or Marine Department assisted at times by local contractors and supervised by the consultants, the relevant documents shall be sent to the Bank promptly after the execution of any such contracts and prior to the submission to the Bank of the first application for withdrawal from the Loan Account in respect of such works.

(b) With respect to contracts for further soil and hydrographical investigations valued at more than \$50,000 equivalent in the aggregate, the procedure shall be as in 1(a)-(g) outlined above with the exception that the prequalification can be waived; that the Borrower forward to the Bank for comments the Terms of Reference for the investigation, and that at least four consultants be asked to submit proposals for the study.

5. With respect to the training of port personnel, the Borrower shall obtain the Bank's concurrence before executing any contract for such training.