No. 11446

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT and

MALAYSIA

Loan Agreement—Second Telecommunications Project (with annexed General Conditions Applicable to Loan and Guarantee Agreements). Signed at Washington on 21 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 d'emprunt — Deuxième projet relatif aux télécommunications (avec, en annexe, les Conditions générales applicables aux contrats d'emprunt et de garantie). Signé à Washington le 21 juin 1971

Texte authentique: anglais.

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

LOAN AGREEMENT¹

AGREEMENT, dated June 21, 1971, between MALAYSIA (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 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, subject, however, to the following modifications thereof (said General Conditions Applicable to Loan and Guarantee Agreements of the Bank, as so modified, being hereinafter called the General Conditions):

- (a) Section 5.01 is deleted.
- (b) Section 6.02 (i) is amended to read as follows:

"Any event specified in paragraph (e) or (f) of Section 7.01 shall have occurred."

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 and the term "TDM" means the Telecommunications Department of the Ministry of Works, Posts and Telecommunications of the Borrower or any successor thereto performing telecommunications services in the territories of the Borrower.

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 eighteen million seven hundred thousand dollars (\$18,700,000).

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 The amount of the Loan may be withdrawn from the Loan Account in accordance with the provisions of Schedule 1 to this Agreement, as such Schedule shall be amended from time to time, for expenditures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 withdrawal shall be made 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.

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

 $^{^1}_2$ Came into force on 18 August 1971, upon notification by the Bank to the Government of Malaysia. See p. 114 of this volume.

- Procurement under World Bank Loans and IDA Credits, published by the Bank in August 1969, as revised in May 1971, 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, 1976 or such other date as shall be agreed between the Borrower and the Bank.
- Section 2.05. The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths of one per cent (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 $(7^{1}/4\%)$ 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 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 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 Minister of Finance 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 through TDM with due diligence and efficiency and in conformity with sound engineering, telecommunications and financial practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the purpose.
- Section 3.02. (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 3.03. (a) The Borrower shall furnish to the Bank, promptly upon their preparation, the plans and construction 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.

Article IV. OTHER COVENANTS

Section 4.01. (a) It is the mutual intention of the Borrower 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 Borrower (i) represents that at the date of this Agreement no lien exists on any governmental assets as security for any external debt, and (ii) undertakes that, except as the Bank shall otherwise agree, 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 Borrower 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.
- (d) As used in this Section, the term "governmental assets" includes: (i) assets of the Borrower; (ii) assets of any statutory authority of the Borrower, including assets of any state or political subdivision of the Borrower; (iii) assets of any agency of the Borrower, including the Bank Negara Malaysia or any other institution at any time performing the functions of a central bank for the Borrower; and (iv) any right, interest or share of the Borrower in the Currency Fund and Currency Surplus Fund administered under the Malaya British Borneo Currency Agreement, 1960.
- Section 4.02. (a) The Borrower shall cause to be maintained, in accordance with the Borrower's Telecommunications Act, 1950, records adequate to reflect in accordance with consistently maintained sound accounting practices the operations, resources and expenditures of TDM including the operations relating to the Telecommunication Fund of TDM established under Part II A of said Act.
- (b) Without limitation to the Borrower's obligations under paragraph (a) of this Section, the Borrower shall cause: (i) TDM's accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year to be audited, in accordance with sound commercial auditing principles consistently applied, by the Auditor General or by independent auditors acceptable to the Bank; (ii) TDM to furnish to the Bank, with effect from 1973, 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 the Auditor General or said auditors, of such scope and in such detail

as the Bank shall have reasonably requested; and (iii) TDM to furnish to the Bank such other information concerning the accounts and financial statements of TDM and the audit thereof as the Bank shall from time to time reasonably request.

Section 4.03. (a) Except as the Bank shall otherwise agree, the Borrower shall adjust and maintain the telecommunications tariffs of TDM to provide revenue sufficient to produce an annual rate of return of not less than 8% on the value of TDM's net fixed assets in operation.

- (b) For the purposes of this Section:
- (i) The annual rate of return shall be calculated by relating the operating income accruing from the telecommunications services of TDM for the year in question to the average of the value of TDM's net fixed assets in operation at the beginning and at the end of that year.
- (ii) The term "value of TDM's net fixed assets in operation" shall mean the gross value of such assets, less the amount of accumulated depreciation, valued in accordance with consistently maintained methods of valuation, acceptable to the Borrower and the Bank.
- (iii) The term "operating income" shall mean the difference between:
 - (A) all operating revenue accruing from the telecommunications services excluding contributions towards capital expenses and subscribers' deposits; and
 - (B) all operating cost of the telecommunications services including administration expenses, adequate maintenance and provision for depreciation on all depreciable assets computed in accordance with the straight-line method at an average rate of not less than $4^{1}/_{2}\%$ per annum of the value of the gross fixed assets as shown in the balance sheets of TDM, but excluding interest and other charges on debt.

Section 4.04. The Borrower shall operate and maintain TDM's plants, equipment and property, and from time to time make all necessary renewals and repairs thereof, all in accordance with sound engineering and telecommunications standards and practices.

Section 4.05. (a) The Borrower shall cause TDM, under the supervision of experienced and competent management, at all times to plan and manage its operations and affairs, plan its future expansion, maintain its financial position and carry on its operations, all in accordance with sound business, financial, engineering and telecommunications practices.

(b) Until the completion of the Project, the Borrower shall consult the Bank before TDM commits itself to any capital expenditure not required for the Project if the aggregate of such capital expenditure made or to be made in any one fiscal year should exceed an amount equivalent to one million dollars (\$1,000,000) or five per cent (5%) of the aggregate amount of all TDM's capital expenditures made during the preceding fiscal year, whichever amount is greater.

Article V. Consultation. Information and Inspection

Section 5.01. The Borrower and the Bank shall cooperate fully to assure 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:

- (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, in respect of the Project, of the departments 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; and
- (b) 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 Borrower, such information shall include information with respect to financial and economic conditions in the territories of the Borrower, including its balance of payments, and the external debt of the Borrower, of any of its political subdivisions and of any agency of the Borrower or of any such political subdivision.
- Section 5.02. (a) The Borrower shall furnish or cause to be furnished to the Bank all such information as the Bank shall reasonably request concerning the operations and financial condition, in respect of the Project, of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof.
- (b) The Borrower and the Bank 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 5.03. 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.

Article VI. Taxes and Restrictions

Section 6.01. 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 Borrower 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 Borrower.

Section 6.02. The Loan Agreement, any instrument made pursuant to Section 4.01 of this Agreement and the Bonds shall be free from any taxes on or in connection with the execution, issue, delivery or registration thereof imposed under the laws of the Borrower or laws in effect in its territories and the Borrower shall pay all such taxes, if any, imposed under the laws of any other country or countries.

Section 6.03. 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 and moratoria of any nature imposed under the laws of the Borrower or laws in effect in its territories.

Article VII. REMEDIES OF THE BANK

Section 7.01. If any event specified in Section 7.01 of the General Conditions, or in Section 7.02 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 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 7.02. For the purposes of Section 7.01 of the General Conditions, the following additional event is specified:

A default shall have occurred under the Loan Agreement with the Bank (*Telecommunications Project*) dated September 27, 1968 to other than in respect of the payment of the principal or interest or any other payment required thereunder.

Article VIII. TERMINATION

Section 8.01. The date August 23, 1971, is hereby specified for the purposes of Section 11.04 of the General Conditions.

Article IX. Representative of the Borrower: Addresses

Section 9.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 10.03 of the General Conditions.

Section 9.02. The following addresses are specified for the purposes of Section 10.01 of the General Conditions:

For the Borrower:

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

¹ United Nations, Treaty Series, vol. 668, p. 167.

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

Malaysia:

By Tan Sri Ong Yoke Lin

Authorized Representative

International Bank for Reconstruction and Development:

By J. Burke Knapp Vice President

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 the amounts of the Loan to each category and the percentage of eligible expenditures so to be financed in each category:

Category	Amount of the Loan Allocated (Expressed in Dollar Equivalent)	% of Expenditures to be Financed
I. Local Telephone Service: (a) cable wire, carrier equipment and line plant accessories	9,170,000	100% of total expenditures
(b) subscribers' apparatus(c) radio equipment	1,840,000 880,000	100% of total expenditures 100% of foreign expenditures
II. Long Distance and International Service:		
(a) cable wire and line plant accessories	520,000	100% of total expenditures
(b) radio and transmission equipment	4,820,000	100% of foreign expenditures
III. Telegraph and Telex Equipment	460,000	100% of foreign expenditures
IV. Vehicles, workshop, test- ing, and training equip- ment	1,010,000	100% of foreign expenditures
TOTAL	18,700,000	

- 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 country other than the Borrower;
- (b) the term "local expenditures" means expenditures in the currency of the Borrower, or for goods produced in, or services supplied from, the territories of the Borrower; and
- (c) the term "total expenditures" means the aggregate of foreign and local expenditures.
- 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; and
- (b) payments for taxes imposed under the laws of the Borrower or laws in effect in its territories on goods or services, or on the importation, manufacture, procurement or supply thereof. To the extent that the amount represented by the percentage set forth in the third column of the table in paragraph 1 above in respect of any Category would exceed the amount payable net of all such taxes, such percentage shall be reduced to ensure that no proceeds of the Loan will be withdrawn on account of payments for such taxes.
- 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 or subcategory shall decrease, the amount of the Loan then allocated to such Category or subcategory and no longer required therefor will be reallocated by the Bank to any other Category or subcategory;
- (b) if the estimate of the expenditures under any Category or subcategory shall increase, an amount equal to the portion, if any, of such increase to be financed out of the proceeds of the Loan will be allocated by the Bank, at the request of the Borrower, to such Category or subcategory from any other Category or subcategory, taking into account, however, the requirements as determined by the Bank, of such other Category or subcategory.

SCHEDULE 2

DESCRIPTION OF THE PROJECT

The Project is designed to assist in the expansion of Malaysia's telecommunication services under the Second Malaysia Plan (1971-75) and includes:

Part A

Installation of telephone exchange equipment, subscribers' distribution plant including radio telephones, telephone apparatus, the acquisition of associated sites and the construction of buildings and the addition of about 80,000 additional subscribers' lines.

Part B

Installation and extension of the long distance network (mainly microwave systems) by about 100,000 circuit miles.

Part C

(1) Installation of new and replacement UHF and VHF systems for service to Sumatra and Kalimantan.

(2) Extension of international multiplexing and switching facilities.

Part D

- (1) Improvement and extension of telex and gentex facilities allowing connection of about 500 additional telex and gentex subscribers.
- (2) Extension of the public telegraph and leased circuit networks.

Part E

- (1) Construction of additional headquarters and stores buildings.
- (2) Purchase of vehicles and miscellaneous items.

The Project is expected to be completed by December 31, 1975.

SCHEDULE 3

AMORTIZATION SCHEDULE

Date Payment Due	Payment of Principal (expressed in dollars)*	Date Puyment Due	Payment of Principal (expressed in dollars)*
September 1, 1976	355,000	March 1, 1984	605,000
March 1, 1977	370,000	September 1, 1984	625,000
September 1, 1977	380,000	March 1, 1985	650,000
March 1, 1978	395,000	September 1, 1985	675,000
September 1, 1978	410,000	March 1, 1986	700,000
March 1, 1979	425,000	September 1, 1986	725,000
September 1, 1979	440,000	March 1, 1987	750,000
March 1, 1980	455,000	September 1, 1987	775,000
September 1, 1980	470,000	March 1, 1988	805,000
March 1, 1981	490,000	September 1, 1988	835,000
September 1, 1981	505,000	March 1, 1989	865,000
March 1, 1982	525,000	September 1, 1989	895,000
September 1, 1982	545,000	March 1, 1990	930,000
March 1, 1983	565,000	September 1, 1990	960,000
September 1, 1983	585,000	March 1, 1991	990,000

^{*} 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:

Time of Prepayment or Redemption	Premium
Not more than three years before maturity	2% 3 ¹ / ₂ % 5 ¹ / ₄ % 6 ¹ / ₄ %

SCHEDULE 4

PROCUREMENT

- 1. With respect to any contract for goods and services estimated to cost the equivalent of \$100,000 or more:
- (a) If bidders are required to prequalify, the Borrower shall, before qualification is invited, inform the Bank in detail of the procedure to be followed and shall introduce such modifications in said 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 to, or deletions from, the said list as the Bank shall reasonably request.
- (b) 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. If the Borrower (i) shall not make any modification in the said documents or procedures reasonably requested by the Bank or (ii) shall make any further modification to the said bidding documents without the Bank's concurrence, no expenditure under any contract awarded on the basis of such bidding shall be financed out of the proceeds of the Loan.
- (c) After bids have been received and evaluated, the Borrower shall, before a final decision on 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 on the evaluation and comparison of the bids received, together with the recommendations for award and the reasons for the intended award. The Bank shall promptly inform the Borrower whether it has any objection to the intended award on the ground that it would be inconsistent with the Guidelines for Procurement under World Bank Loans and IDA Credits referred to in Section 2.03 of this Agreement or with the Loan Agreement, and shall state the reasons for any objections it may have.
- (d) 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.
- (e) 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. With respect to any other contract for goods and services, the Borrower shall furnish 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, the analysis of bids, the recommendation for award 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 for Procurement under World Bank Loans and IDA Credits referred to in Section 2.03 of this Agreement or with the Loan Agreement and, in such event, no expenditure under such contract shall be financed out of the proceeds of the Loan.
- 3. For the purpose of evaluating bids for goods and associated services included in the table set out in paragraph 1 of Schedule 1 to this Agreement, bid prices to be used for evaluation shall be determined in accordance with the following rules:
- (a) The term "Local Bid" means a bid submitted by a manufacturer established in the territories of the Borrower 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) inland freight, insurance and other costs of delivery of such goods to the place of their storage, 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. (appropriate port of entry in Malaysia) price of such goods;
 - (ii) the amount of any taxes on the importation of such goods into the territories of the Borrower which generally apply to non-exempt importers, or 15% of the amount specified in (i) above, whichever shall be the lower; and
 - (iii) inland freight, insurance and other costs of delivery of such goods to the place of their storage, use or installation.

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.]