

No. 12024

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

**Guarantee Agreement—*Second Railway Project* (with schedule and General Conditions Applicable to Loan and Guarantee Agreements). Signed at Washington on 2 June 1972**

*Authentic text : English.*

*Registered by the International Bank for Reconstruction and Development on 26 September 1972.*

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

**Contrat de garantie — *Deuxième projet relatif aux chemins de fer* (avec annexe et Conditions générales applicables aux contrats d'emprunt et de garantie). Signé à Washington le 2 juin 1972**

*Texte authentique : anglais.*

*Enregistré par la Banque internationale pour la reconstruction et le développement le 26 septembre 1972.*

## GUARANTEE AGREEMENT<sup>1</sup>

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AGREEMENT, dated June 2, 1972, between UNITED MEXICAN STATES (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by the Loan Agreement of even date herewith<sup>2</sup> between the Bank and Ferrocarriles Nacionales de México and Nacional Financiera, S.A. (hereinafter called the Borrowers) the Bank has agreed to make to the Borrowers a loan in various currencies equivalent to seventy-five million dollars (\$75,000,000), 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 Borrowers 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 Borrowers, has agreed so to guarantee such obligations of the Borrowers;

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,<sup>3</sup> 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 and in Section 1.02 of the Loan Agreement have the respective meanings therein set forth.

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<sup>1</sup> Came into force on 17 August 1972, upon notification by the Bank to the Government of Mexico.

<sup>2</sup> The said Agreement entered into force on 17 August 1972. As it does not constitute an international agreement or a part of the present Agreement, it is not reproduced herein. However, it was published by the Bank as document LN 825 ME, a certified true copy of which was transmitted to the Secretariat together with the documentation submitted for registration of the present Guarantee Agreement.

<sup>3</sup> See p. 18 of this volume.

## Article II

### GUARANTEE; BONDS; PROVISION OF FUNDS

*Section 2.01.* Without limitation or restriction upon any of its other obligations under this 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 and the punctual performance of all the other obligations of the Borrowers, and each of them, 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 Borrowers. Nacional Financiera, S.A., and such other person or persons as it 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 to provide, or to make arrangements satisfactory to the Bank promptly to provide or cause to be provided, upon terms and conditions satisfactory to the Bank, all such funds as shall be needed to meet the expenditures required for the carrying out of the Project.

## Article III

### EXECUTION OF PART F OF THE PROJECT AND OTHER COVENANTS

*Section 3.01.* (a) Part F of the Project shall be carried out by SCT with due diligence and efficiency and in conformity with sound administrative, financial and engineering practices, and the Guarantor shall, and shall cause all its agencies to, give SCT such assistance and cooperation as shall be necessary for such purpose.

(b) In carrying out Parts F (a) and (b) of the Project, SCT shall employ consultants acceptable to the Bank upon terms and conditions satisfactory to the Bank.

(c) SCT shall (i) cause the study included in Part F (b) of the Project to be completed not later than December 31, 1973 or such other date as shall be agreed with the Bank, and (ii) afford the Bank a reasonable opportunity to comment on the implementation of such study's recommendations.

(d) SCT shall prepare a program and timetable acceptable to the Bank for the carrying out of Part F (c) of the Project.

*Section 3.02.* The Guarantor shall make with the Borrowers contractual arrangements satisfactory to the Bank providing, *inter alia*, for the transfer from the Borrowers to the Guarantor of the proceeds of the Loan in respect of Part F of the Project and for the repayment of such proceeds by the Guarantor, and except as the Bank shall otherwise agree, the Guarantor shall not amend, assign, abrogate or waive any provision of such arrangements.

*Section 3.03. (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, 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, and at no cost to the Bank or the holders of the Bonds, 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, *(a)* the term “governmental assets” means assets of the Guarantor, of any of its political subdivisions or of any agency, and *(b)* the term “agency” means any agency or instrumentality of the Guarantor or of any political subdivision of the Guarantor and shall include any institution or organization which is owned or controlled directly or indirectly by the Guarantor or by any political subdivision of the Guarantor or the operations of which are conducted primarily in the interest of or for account of the Guarantor or any political subdivision of the Guarantor.

*Section 3.04.* The Guarantor shall make available to the Bank for its comments, before June 30, 1972, or such other date as shall be agreed between the Guarantor and the Bank, the study on passenger traffic in the Guarantor’s territories presently being carried out by the Guarantor’s Secretaría de Comunicaciones y Transportes, and shall afford the Bank a reasonable opportunity to comment on the implementation of such study’s recommendations.

*Section 3.05.* The Guarantor shall cause Nacionales and the other railways, no later than December 31, 1975 or such other date as shall be agreed between the Guarantor and the Bank : (i) to introduce a common tariff base and

(ii) in accordance with a timetable to be agreed with the Bank to take all such action as shall be necessary for the unification of their operations, including but not limited to standardization of trains, unification of yards operations and specialization of maintenance shops.

*Section 3.06.* The Guarantor shall cause the proceeds after January 1, 1972 of the now existing 12.2% tax on the gross freight revenue of Nacionales to be turned over to Nacionales.

*Section 3.07.* The Guarantor shall take all such action as shall be necessary, including but not limited to the provision of funds, for the implementation by the other railways of the coordinated investment plans for the years 1972 and 1973 which are set forth in Schedule 1 to this Agreement, and such plans shall not be amended without the agreement of the Bank.

*Section 3.08.* The Guarantor shall cause the other railways to prepare and introduce not later than December 31, 1973 or such other date as shall be agreed with the Bank, under the coordination of SCT, corporate plans acceptable to the Bank aiming to the achievement of financial viability by 1981.

*Section 3.09.* The Guarantor shall take all such action, including but not limited to allowing Nacionales to increase its rates, fares and other charges, as shall be necessary to permit Nacionales to promptly carry out the Plan of Action described in Schedule 5 to the Loan Agreement, and shall for such purpose, inter alia, after evaluating the recommendations of Nacionales referred to in Paragraphs 3, 4 and 5 of the Plan of Action, adopt or cause such recommendations to be adopted.

*Section 3.10.* The Guarantor shall construct new railway lines prior to December 31, 1975, only if their economic and financial viability has been established in agreement with the Bank.

#### *Article IV*

##### CONSULTATION, INFORMATION AND RECORDS

*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.

*Section 4.03.* SCT shall (i) maintain records adequate to reflect the progress of Part F of the Project and to identify the services financed out of the proceeds of the Loan in respect of such Part of the Project, and to disclose the use thereof in the Project; (ii) enable the Bank's representatives to inspect any records and documents relevant to such Part of the Project; and (iii) furnish to the Bank all such information as the Bank shall reasonably request concerning such Part of the Project, the expenditure therein of the proceeds of the Loan and the services financed out of such proceeds.

#### *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 and the Bonds shall be free from any taxes that shall be imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof.

*Section 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.* Nacional Financiera, S.A. 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 :

United Mexican States  
c/o Nacional Financiera, S.A.  
Isabel la Católica 51  
México 1, D.F. México

For the Bank :

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

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.

United Mexican States  
*By* Nacional Financiera, S.A. :  
*By* HUGO B. MARGÁIN  
Authorized Representative

International Bank for Reconstruction and Development :  
*By* ROBERT S. McNAMARA  
President

## SCHEDULE 1

## 1972-1973 INVESTMENT PLANS FOR THE OTHER RAILWAYS

(in million pesos)

	<i>Ferrocarriles del Pacífico S.A.</i>	<i>Ferrocarriles Chihuahua al Pacífico S.A. de C.V.</i>	<i>Ferrocarriles Sonora-Baja California</i>	<i>Ferrocarriles Unidos del Sureste</i>
<i>Ways and Structures</i>				
Bridges and Tunnels	40	13	37	—
Rails and Fastenings	60	8	—	—
Extension of Crossing Loops	4	—	—	—
Timber Sleepers	4	7	15	2
Track Maintenance Equipment	5	1	8	—
Staff Housing and Medical Services	26	9	11	—
Ballast	12	11	6	3
Line Revision	20	3	2	—
Tools, Switches and Welding Equipment	4	—	1	—
Miscellaneous	13	—	3	—
Subtotal	188	52	83	5
<i>Terminals</i>				
Maintenance Shops	7	—	—	1
Yards	7	—	—	—
Stations and Freight Sheds	7	12	—	—
Miscellaneous	—	14	2	—
Subtotal	21	26	2	1
<i>Motive Power and Rolling Stock</i>				
Locomotives and Spare Parts	91	37	18	17
Freight Cars and Containers	140	96	13	13
Roller Bearings	—	—	—	—
Passenger Cars	18	3	15	—
Workshop Machinery	10	—	4	—
Subtotal	259	136	50	30
<i>Telecommunications</i>				
	5	3	2	3
<i>Consulting Services</i>				
	—	—	—	—
TOTAL	473	217	137	39
<i>Price Contingencies</i>				
	18	9	5	2
GRAND TOTAL	491	226	142	41



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.*]

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