

No. 12018

**INTERNATIONAL DEVELOPMENT ASSOCIATION
and
CONGO**

**Development Credit Agreement—*Railway Project* (with
schedules and General Conditions Applicable to De-
velopment Credit Agreements). Signed at Washington
on 7 April 1972**

Authentic text: English.

*Registered by the International Development Association on 26 September
1972.*

**ASSOCIATION INTERNATIONALE
DE DÉVELOPPEMENT
et
CONGO**

**Contrat de crédit de développement — *Projet relatif aux
chemins de fer* (avec annexes et Conditions générales
applicables aux contrats de crédit de développement).
Signé à Washington le 7 avril 1972**

Texte authentique : anglais.

*Enregistré par l'Association internationale de développement le 26 septem-
bre 1972.*

DEVELOPMENT CREDIT AGREEMENT¹

AGREEMENT, dated April 7, 1972, between the PEOPLE'S REPUBLIC OF THE CONGO (hereinafter called the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (hereinafter called the Association).

Article I

GENERAL CONDITIONS; DEFINITIONS

Section 1.01. The parties to this Agreement accept all the provisions of the General Conditions Applicable to Development Credit Agreements of the Association, dated January 31, 1969,² with the same force and effect as if they were fully set forth herein, subject, however, to the deletion of Sections 5.01 and 6.02 (*h*) thereof and to the renumbering of Section 6.02 (*i*) into 6.02 (*h*) thereof (said General Conditions Applicable to Development Credit Agreements of the Association, 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 and the following additional terms have the following meanings:

(a) "ATC" means Agence Transcongolaise des Communications, an agency of the Borrower established by the Borrower's *Ordonnance* No. 21/69 dated October 24, 1969;

(b) "CFCO" means ATC's Section du Chemin de Fer Congo-Océan et Voies Terrestres;

(c) "*Statuts*" means the legislation regulating ATC, set forth in the Borrower's Decree No. 70/38 dated February 11, 1970;

(d) "Project Agreement" means the agreement between the Association and ATC of even date herewith,³ as the same may be amended from time to time, and such term includes all schedules to the Project Agreement;

¹ Came into force on 30 May 1972, upon notification by the Association to the Government of the Congo.

² See p. 224 of this volume.

³ The said Agreement entered into force on 30 May 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 Association as document CN 297 COB, a certified true copy of which was transmitted to the Secretariat together with the documentation submitted for registration of the present Development Credit Agreement.

(e) “Subsidiary Loan Agreement” means the agreement to be entered into between the Borrower and ATC pursuant to Section 3.01 (b) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Subsidiary Loan Agreement; and

(f) “Railway Assets” means all present and future property and assets (including any rights, powers, privileges and franchises) of ATC required for the efficient management and operation of the Congo-Océan Railway.

Article II

THE CREDIT

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions in the Development Credit Agreement set forth or referred to, an amount in various currencies equivalent to six million three hundred thousand dollars (\$6,300,000).

Section 2.02. The amount of the Credit may be withdrawn from the Credit 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 Association 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 Development Credit Agreement; provided, however, that, except as the Association 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 Association shall otherwise agree, the goods and services required for the Project and to be financed out of the proceeds of the Credit shall be procured pursuant to the provisions set forth or referred to in Section 2.03 of the Project Agreement.

Section 2.04. The Closing Date shall be December 31, 1974 or such other date as shall be agreed between the Borrower and the Association.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one per cent ($3/4$ of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Service charges shall be payable semi-annually on March 1 and September 1 in each year.

Section 2.07. The Borrower shall repay the principal amount of the Credit withdrawn from the Credit Account in semi-annual installments

payable on each March 1 and September 1 commencing September 1, 1982 and ending March 1, 2022, each installment to and including the installment payable on March 1, 1992 to be one-half of one per cent ($\frac{1}{2}$ of 1%) of such principal amount, and each installment thereafter to be one and one-half per cent ($1\frac{1}{2}\%$) of such principal amount.

Section 2.08. The currency of the Republic of France is hereby specified for the purposes of Section 4.02 of the General Conditions.

Section 2.09. ATC is designated as representative of the Borrower for the purposes of taking any action required or permitted to be taken under the provisions of Section 2.02 of this Agreement and Article V of the General Conditions.

Article III

EXECUTION OF THE PROJECT

Section 3.01. (a) The Borrower shall cause ATC to carry out the Project with due diligence and efficiency and in conformity with sound administrative, financial, engineering and railway practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the purpose.

(b) The Borrower shall relend the proceeds of the Credit to ATC under a subsidiary loan agreement to be entered into between the Borrower and ATC under terms and conditions which shall have been approved by the Association, such terms and conditions to include interest at the rate of 7.25% per annum and repayment over 30 years including 5 years of grace.

(c) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit, and except as the Association shall otherwise agree, the Borrower shall not assign, nor amend, abrogate or waive the Subsidiary Loan Agreement or any provision thereof.

(d) The Borrower shall take and shall cause all its agencies to take all action which shall be necessary on their part to enable ATC to perform all of its obligations under the Project Agreement and the Subsidiary Loan Agreement and shall not take or permit to be taken any action which might interfere with such performance.

Section 3.02. Except as the Association shall otherwise agree, the Borrower shall cause all goods and services financed out of the proceeds of the Credit to be used exclusively for CFCO's railway operations.

Section 3.03. The Borrower shall or shall cause ATC to: (i) 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 Credit, and to disclose the use thereof in the Project; (ii) enable the Association's representatives to inspect the Project, the goods financed out of the proceeds of the Credit and any relevant records and documents; and (iii) furnish to the Association all such information as the Association shall reasonably request concerning the Project, the expenditure of the proceeds of the Credit and the goods and services financed out of such proceeds.

Article IV

OTHER COVENANTS

Section 4.01. The Borrower shall maintain or cause to be maintained records adequate to reflect in accordance with consistently maintained sound accounting practices 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.

Section 4.02. The Borrower, before undertaking any major road construction between Brazzaville and Pointe Noire, shall make a feasibility study of such road construction, shall furnish the Association a copy of such study and shall afford the Association sufficient opportunity to comment thereon.

Section 4.03. The Borrower shall settle all its future debts to ATC by the end of each fiscal year during which they were incurred, and undertakes to use its best efforts to settle as soon as possible its presently outstanding debt to ATC.

Article V

CONSULTATION, INFORMATION AND INSPECTION

Section 5.01. The Borrower and the Association shall cooperate fully to assure that the purposes of the Credit will be accomplished. To that end, the Borrower and the Association 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 Development Credit Agreement, the performance by ATC of its obligations under the Project Agreement, the administration, operations and financial con-

dition of ATC and, in respect of the Project, of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof, and other matters relating to the purposes of the Credit; and

- (b) furnish to the other all such information as it shall reasonably request with regard to the general status of the Credit. 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 Association all such information as the Association shall reasonably request concerning the operations and financial condition of ATC and, 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 Association shall promptly inform each other of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Credit, the maintenance of the service thereof, the performance by either of them of its obligations under the Development Credit Agreement or the performance by ATC of its obligations under the Project Agreement and the Subsidiary Loan Agreement.

Section 5.03. The Borrower shall afford all reasonable opportunity for accredited representatives of the Association to inspect all plants, installations, sites, works, buildings, property and equipment of ATC and any relevant records and documents and to visit any part of the territories of the Borrower for purposes related to the Credit.

Article VI

TAXES AND RESTRICTIONS

Section 6.01. The principal of, and service charges on, the Credit 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.

Section 6.02. The Development Credit Agreement and the Project Agreement shall be free from any taxes on or in connection with the execution, delivery or registration thereof, imposed under the laws of the Borrower or laws in effect in its territories.

Section 6.03. The payment of the principal of, and service charges on, the Credit 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 ASSOCIATION

Section 7.01. If any event specified in Section 7.01 of the General Conditions or in Section 7.03 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 Association, at its option, may by notice to the Borrower declare the principal of the Credit then outstanding to be due and payable immediately together with the service charges thereon and upon any such declaration such principal and service charges shall become due and payable immediately, anything to the contrary in the Development Credit Agreement notwithstanding.

Section 7.02. For the purposes of Section 6.02 of the General Conditions, the following additional events are specified:

- (a) the *Statuts* shall have been modified, suspended or abrogated so as to materially and adversely affect, in the opinion of the Association, the operation or financial condition of ATC or the performance by ATC of its obligations under the Project Agreement;
- (b) a default shall occur in the performance of any obligation on the part of ATC under the Project Agreement and such default shall continue for a period of sixty days after notice thereof shall have been given by the Association to the Borrower and to ATC; and
- (c) ATC shall be divested of any of the Railway Assets or the operation or management thereof.

Section 7.03. For the purposes of Section 7.01 of the General Conditions, the following additional events are specified, namely, that the events specified in paragraphs (a), (b) and (c) of Section 7.02 of this Agreement shall occur.

Article VIII

EFFECTIVE DATE; TERMINATION

Section 8.01. The following events are specified as additional conditions to the effectiveness of the Development Credit Agreement within the meaning of Section 10.01 (b) of the General Conditions:

- (a) The execution and delivery of the Project Agreement on behalf of ATC have been duly authorized or ratified by all necessary corporate and governmental action.
- (b) The execution and delivery of the Subsidiary Loan Agreement on behalf of the Borrower and ATC, respectively, have been duly authorized or ratified by all necessary corporate and governmental action.

Section 8.02. The following are specified as additional matters, within the meaning of Section 10.02 (b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association:

- (a) That the Project Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, ATC, and constitutes a valid and binding obligation of ATC in accordance with its terms.
- (b) That the Subsidiary Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and ATC, respectively, and constitutes a valid and binding obligation of the Borrower and ATC in accordance with its terms.

Section 8.03. The date July 6, 1972 is hereby specified for the purposes of Section 10.04 of the General Conditions.

Section 8.04. The obligations of the Borrower under Sections 4.01 and 4.02 of this Agreement and the provisions of paragraphs (a), (b) and (c) of Section 7.02 of this Agreement and those of Section 7.03 of this Agreement shall cease and determine on the date on which the Development Credit Agreement shall terminate or on a date thirty years after the date of this Agreement, whichever shall be the earlier.

Article IX

REPRESENTATIVE OF THE BORROWER; ADDRESSES

Section 9.01. The Minister of Finance and Budget of the Borrower is designated as representative of the Borrower for the purposes of Section 9.03 of the General Conditions.

Section 9.02. The following addresses are specified for the purposes of Section 9.01 of the General Conditions:

For the Borrower:

Le Ministère des Finances et du Budget
de la République Populaire du Congo
Brazzaville
République Populaire du Congo

Cable address:

Minifinances
Brazzaville

For the Association:

International Development Association
1818 H Street, N. W.
Washington, D.C. 20433
United States of America

Cable address:

Indevas
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.

The People's Republic of the Congo:

By NICOLAS MONDJO
Authorized Representative

International Development Association:

By M. SHOAB
Vice President

SCHEDULE 1

WITHDRAWAL OF THE PROCEEDS OF THE CREDIT

1. The table below sets forth the categories of imported items to be financed out of the proceeds of the Credit and the allocation of amounts of the Credit to each category:

<i>Category</i>	<i>Amount of the Credit Allocated (Expressed in Dollar Equivalent)</i>
I. Freight cars, including spare parts	4,000,000
II. Consultants' services, part 8 of the Project	300,000
III. Consultants' services, part 9 of the Project	1,400,000
IV. Unallocated	600,000
	<u>TOTAL 6,300,000</u>

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

- (a) expenditures for goods produced in, or services supplied from, the territories of the Borrower;
- (b) expenditures prior to the date of this Agreement; and
- (c) 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.

3. Notwithstanding the allocation of an amount of the Credit 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 Credit then allocated to such Category and no longer required therefor will be reallocated by the Association by increasing correspondingly the unallocated amount of the Credit;
- (b) if the estimate of the expenditures under any Category shall increase, a corresponding amount will be allocated by the Association, at the request of the Borrower, to such Category from the unallocated amount of the Credit, subject, however, to the requirements for contingencies, as determined by the Association, in respect of any other expenditures; and
- (c) if the Association shall have reasonably determined that the procurement of any item in any Category is inconsistent with the procedures set forth or referred to in Section 2.03 of this Agreement, no expenditures for such item shall be financed out of the proceeds of the Credit and the Association may without in any way restricting or limiting any other right, power or remedy of the Association under the Development Credit Agreement, by notice to the Borrower, cancel such amount of the Credit as in the Association's reasonable opinion, represents the amount of such expenditures which would otherwise have been eligible for financing out of the proceeds of the Credit.

SCHEDULE 2

DESCRIPTION OF THE PROJECT

The Project consists of the implementation of the following studies and investments to improve and expand the capacity of the Borrower's Congo-Océan Railway:

1. Repairs to track structures and renewal of track materials and communication facilities between Pointe Noire and Mont Bello;
2. Extension of crossing loops at about 18 railway stations on the line Pointe Noire-Brazzaville;
3. Renewal with 36 kg/m rail of about 40 km of railway track between Dolisie and Brazzaville;

4. Purchase and placing into service of sufficient track maintenance equipment, comprising gangcars, trucks, earthmoving machinery and miscellaneous mechanical aids;
5. Expansion of workshop buildings at Pointe Noire and provision of additional machine tools, cranes, traversers and auxiliary equipment as required for the proper maintenance of CFCO's rolling stock;
6. Upgrading of about 200 freight cars to allow their utilization in longer and heavier trains, and the training of personnel to operate such trains;
7. Purchase and placing into service of one 3,600 hp and seven 1,800 hp locomotives, about 65 large timber log cars and about 260 general freight cars;
8. Final engineering and preparation of cost estimates for realignment of the route Holle-Dolisie and preparation of tender documents therefor; and
9. A study of ATC's present and future costs and revenues, including: (i) the assessment of present costs of carriage of passengers and freight, especially timber; (ii) an estimate of future costs starting from existing traffic forecasts and overall long-term investment plans and from other factors likely to affect ATC's operating costs and other expenses; and (iii) the establishment of an appropriate rate structure and competitive rate levels for carriage of passengers and freight.

The Project is expected to be completed by June 30, 1974.

INTERNATIONAL DEVELOPMENT ASSOCIATION

GENERAL CONDITIONS, DATED 31 JANUARY 1969

GENERAL CONDITIONS APPLICABLE TO DEVELOPMENT CREDIT AGREEMENTS

[*Not published herein. See United Nations, Treaty Series, vol. 703, p. 244.*]