

No. 12082

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

Guarantee Agreement—*MBR Iron Ore Project* (with General Conditions Applicable to Loan and Guarantee Agreements). Signed at Washington on 25 August 1971

Authentic text: English.

Registered by the International Bank for Reconstruction and Development on 17 October 1972.

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

Contrat de garantie — *Projet MBR relatif à l'extraction du minerai de fer* (avec Conditions générales applicables aux contrats d'emprunt et de garantie). Signé à Washington le 25 août 1971

Texte authentique : anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 17 octobre 1972.

GUARANTEE AGREEMENT¹

AGREEMENT, dated August 25, 1971, between FEDERATIVE REPUBLIC OF BRAZIL (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 Minerações Brasileiras Reunidas, S.A.-MBR (hereinafter called the Borrower), the Bank has agreed to make to the Borrower a loan in various currencies equivalent to fifty million dollars (\$50,000,000), on the terms and conditions set forth in the Loan Agreement and in various other agreements relating thereto, 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 and the Borrower's agreement to payment of a fee amounting to 2% on the disbursed balance outstanding on the Loan, 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 Schedule 5 to 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 the Loan Agreement including the Recitals thereof have the respective meanings therein set forth.

Article II. GUARANTEE; BONDS

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, and 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 Guarantor and such 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.

¹ Came into force on 4 February 1972, upon notification by the Bank to the Government of Brazil.

² The said Agreement entered into force on 4 February 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 787 BR, a certified true copy of which was transmitted to the Secretariat together with the documentation submitted for registration of the present Guarantee Agreement.

³ See p. 33 of this volume.

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, considering the limitations set forth in writing to the Bank on July 1, 1971, no lien exists on any assets of the Guarantor or of any of its political subdivisions or of any agency of any such political subdivision as security for any external debt, and (ii) undertakes that if any such lien shall hereafter 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 the payment of the purchase price of such property; (ii) any lien on commercial goods to secure a debt maturing not more than one year after the date on which it is originally incurred and to be paid out of the proceeds of sale of such commercial goods; or (iii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

The term "assets of the Guarantor" as used in this Section includes assets of the Guarantor or of any agency of the Guarantor, including Banco Central do Brasil and any other institution performing the functions of a central bank for the Guarantor.

Section 3.02. The Guarantor covenants that it will not take, or cause or permit any of its political subdivisions or any of its agencies or any agency of any such political subdivisions to take, any action which would prevent or interfere with the successful construction and operation of the Project or with the performance by the (i) Borrower of its obligations contained in the Loan Agreement, the Rail Contract, the Japanese Ore Purchase Agreement, the agreements providing for the Japanese Loan, the EXIM Loan, the Suppliers Loan and the Consulting Contract, and (ii) shareholders of the Borrower of their obligations contained in the Shareholders Agreement,¹ and will take or cause to be taken all reasonable action necessary or appropriate to permit the successful construction and operation of the Project and to enable the Borrower and its shareholders, as the case may be, to perform such obligations.

Section 3.03. The Guarantor covenants that it will not (i) revoke, repeal, abrogate or amend, or permit any of its political subdivisions or any agency thereof to do any of the foregoing in relation to any of the Approvals in a manner which would materially or adversely affect the ability of the Borrower to carry out the Project or perform any of its obligations under the Loan Agreement, and (ii) take, cause or permit to be taken any action which shall excuse performance, suspend or terminate the obligations of the Borrower to perform any of its obligations under the Rail Contract or the Japanese Ore Purchase Agreement.

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

¹ See footnote 2, p. 30 of this volume.

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, the Mortgage 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 *Ministro da Fazenda* 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:

Ministério da Fazenda
Av. Presidente Antonio Carlos 375
Rio de Janeiro, Brazil

Cable address:

Minifaz
Rio de Janeiro

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.

Federative Republic of Brazil:

By JAYME ALIPIO DE BARROS
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.]
