

No. 17680

**CANADA
and
PERU**

Loan Agreement (with annexes). Signed at Lima on 26 September 1975

*Authentic texts: Spanish, English and French.
Registered by Canada on 11 April 1979.*

**CANADA
et
PÉROU**

Accord de prêt (avec annexes). Signé à Lima le 26 septembre 1975

*Textes authentiques : espagnol, anglais et français.
Enregistré par le Canada le 11 avril 1979.*

LOAN AGREEMENT¹ BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE REPUBLIC OF PERU

WHEREAS, in furtherance of its development programme, the Government of the Republic of Peru (hereinafter referred to as Peru) wishes to secure the financing of pre-investment studies and project management type programs for the use of Corporación Financiera de Desarrollo (hereinafter referred to as COFIDE) as described in annex A to this Agreement;

AND WHEREAS the Government of Canada (hereinafter referred to as Canada), as represented by the Secretary of State for External Affairs acting through the President of the Canadian International Development Agency (hereinafter referred to as CIDA), is willing to make a development loan available for this purpose on the terms and conditions provided herein;

NOW THEREFORE, the Parties hereto agree as follows:

Article I. THE LOAN

Section 1.01. Canada shall make available to Peru on the terms and conditions hereinafter set forth a Loan in an amount not to exceed three million Canadian dollars (\$Can. 3,000,000.00).

Section 1.02. Canada shall open on its books a Loan Account in the name of COFIDE and shall credit to such Account the full amount of the Loan. Withdrawals, payments and disbursements may be made from the Loan Account in accordance with the provision of this Agreement.

Section 1.03. Peru will pay interest at the rate of three per cent (3%) per annum on the amount of the Loan drawn by Peru through COFIDE and outstanding.

Section 1.04. Repayment of the principal amount of the Loan shall be made in forty-six (46) substantially equal semi-annual installments due and payable on March 31 and September 30 of each and every year commencing March 31, 1982, and ending September 30, 2004. Each of the first forty-five (45) semi-annual installments shall be in the amount of sixty-five thousand, two hundred and seventeen Canadian dollars and thirty-nine cents (\$Can. 65,217.39) and the final installment shall be in the amount of sixty-five thousand two hundred and seventeen Canadian dollars and forty-five cents (\$Can. 65,217.45).

Section 1.05. Payment of the interest shall be made in semi-annual installments due and payable on March 31 and September 30, of each year commencing from the first withdrawal of principal. Interest shall be calculated on a 365-day basis for the actual number of days elapsed.

Section 1.06. All payments and repayments are set forth in article 1 herein shall be applied first to the payment of any accrued interest and then to the repayment of the principal amount.

Section 1.07. Peru shall have the right to prepay principal, in whole or in part, on any date without notice to Canada. The amount of any such prepayment shall be applied first to the payment of any accrued interest and then to the installments of principal then remaining payable in the reverse order of their maturity.

¹ Came into force on 26 September 1975 by signature, in accordance with article VIII.

Section 1.08. All payments and repayments as set forth herein shall be made by Peru in Canadian dollars to the Receiver General of Canada and shall be deemed to have been paid when received by the Receiver General of Canada in care of the address shown in article 6, section 6.02.

Section 1.09. The principal of and all interest on the Loan shall be paid to Canada without any deductions whatsoever and, more particularly, shall be free from any taxes, charges or other restrictions imposed under the laws of Peru and those in effect in its territories or administrative, political or judicial divisions or subdivisions.

Section 1.10. The Parties agree that they will negotiate, at the request of either Peru or Canada, concerning acceleration of payments to the Receiver General of Canada required to be made under this Agreement at any time after six (6) months before the first payment of the principal becomes due and payable. Peru and Canada shall mutually determine whether such an acceleration should take place on the basis of the capacity of the Republic of Peru to service a more rapid liquidation of its obligations in the light of its internal and external financial and economic position.

Article II. USE OF THE LOAN

Section 2.01. Except as may otherwise be specifically agreed to by Canada, the proceeds of the Loan shall be used by COFIDE exclusively for the financing of a program of pre-investment studies and project management — type programmes, as described in annex A, and the procedures for their procurement and payment shall be those set forth in annex B. Each annex shall be subject to such subsequent modifications as may be agreed upon between Canada and COFIDE.

Section 2.02. Services contracted for prior to the effective date of this Agreement may not be financed out of the proceeds of the Loan except as may otherwise be agreed to by Canada.

Section 2.03. Proceeds from the Loan shall not be used by COFIDE to meet the costs of any taxes, fees or customs duties imposed directly or indirectly by Peru on any services, material or equipment required for the project.

Article III. WITHDRAWAL OF PROCEEDS OF THE LOAN

Section 3.01. Withdrawals shall be deemed to occur on the dates on which payments are made by Canada either directly to COFIDE or its designated agent or, at the request of COFIDE, to a firm or banking institution in respect of goods and services supplied under this Agreement.

Section 3.02. Subject to the conditions and limitations set forth herein, Peru, only through COFIDE, shall be entitled to withdrawals from the Loan Account in such amounts as are required to meet the costs of the services which are eligible for financing as the costs become due and payable in accordance with annex 3.

Section 3.03. COFIDE or its designated agent shall provide Canada with a copy of each contract or purchase order for the procurement of services, materials and equipment in respect of which any withdrawal is to be made.

Section 3.04. Withdrawals from the Loan Account may be made in favour of such persons or agencies, as may be designated by Peru through COFIDE and agreed to by Canada.

Section 3.05. In each calendar month, Peru through COFIDE shall submit to Canada one (1) application for withdrawal of such amounts as shall have been paid or will be paid during that month, unless otherwise agreed to by Canada.

Section 3.06. COFIDE or its designated agent shall furnish or cause to be furnished to Canada such documents and other evidence in support of its application for withdrawal, as Canada may reasonably request, such evidence to be sufficient in form and substance to establish that the amounts to be withdrawn are properly related to the purpose of the projects.

Article IV. CANCELLATION AND SUSPENSION

Section 4.01. Peru may, by sixty (60) days' written notice to Canada, cancel all or any part of the Loan not withdrawn by COFIDE prior to the giving of such notice and not [be] required to meet outstanding financial obligations to suppliers or firms incurred under the Loan.

Section 4.02. If any of the following events occur, and continue to occur, Canada may, by sixty (60) days' written notice to Peru specifying the reason for suspension, suspend in whole or in part the right of Peru to obtain withdrawals from the Loan Account or, where applicable, declare the principal and interest outstanding due and payable immediately:

- a) A default by Peru in the payment of principal or in any other payments or repayments required under this Agreement and the annexes hereto;
- b) A default on the part of Peru in the performance of any undertakings under this Agreement;
- c) Any extraordinary situation which renders it impossible for Peru to perform its obligations under this Agreement.

If suspension occurs and continues for thirty (30) days, Canada may, by sixty (60) days' written notice to Peru, cancel that part of the Loan not withdrawn prior to the giving of such notice and not [be] required to meet outstanding financial obligations to suppliers or firms incurred under the Loan.

Section 4.03. If the full amount of the Loan is not committed by Peru through COFIDE for the purpose for which it was made within three years of the date of the Agreement, the balance will be cancelled by sixty (60) days' written notice from Canada. During this period Peru through COFIDE may continue to make commitments against the Loan. The final installment or installments of the repayment to be made shall be reduced accordingly. Canada may agree to an extension.

Article V. GENERAL UNDERTAKINGS

Section 5.01. Peru through COFIDE shall ensure that the projects are carried out, operated and maintained with due diligence and efficiency and in conformity with sound financial and technical practices.

Section 5.02. Canada and Peru shall cooperate fully to ensure that the purpose of the Loan will be accomplished, and each shall furnish to the other all such information as shall reasonably be requested with regard to the general status of the Loan. Peru shall inform Canada as soon as possible of any condition or contingency which interferes with, or threatens to interfere with, the accomplishment of the Project or any matter or thing in connection therewith.

Section 5.03. Peru shall afford accredited representatives of Canada all reasonable opportunities to visit any part of the territories of Peru for the purposes related to this Loan Agreement.

Section 5.04. It is understood and agreed by Peru and Canada, that the articles of this Agreement and annexes A, B, and C thereto all form an integral part of the present Agreement.

Article VI. COMMUNICATIONS

Section 6.01. Any communications or documents given, made or sent by either Peru or Canada pursuant to this Agreement or any annex thereto shall be in writing and shall be deemed to have been duly given, made or sent to the Party to which it is addressed at the time of its delivery by hand, mail, telegram, cable, telex or radiogram at its respective address, namely:

For Peru:

Corporación Financiera de Desarrollo
Avenida Inca Garcilaso de la Vega 1456
Lima, Perú

Telex address:

25356 and/or 20162
Lima, Perú

For Canada:

The President
Canadian International Development Agency
122 Bank Street
Ottawa, Ontario
Canada K1A 0G4

Cable address:

CIDA OTTAWA, and/or
Canadian Embassy
Lima, Peru

Section 6.02. Address of the Receiver General of Canada referred to in section 1.08:

Receiver General of Canada
Finance Department
Place Bell Canada
Ottawa, Ontario
Canada K1A 0G5

Section 6.03. Any one of the Parties hereto may, by written notice to the other Party hereto, change the address to which any notice or request intended for the Party so giving such notice shall be addressed.

Section 6.04. All communications and documents pertaining to this Agreement shall be in either English, French or Spanish.

Article VII. AMENDMENTS

Section 7.01. This Agreement and annexes A, B, and C attached hereto, which form part of this Agreement, may be amended from time to time upon agreement of the Parties concerned. Amendments to the main body of the Agreement shall be executed by a formal amendment and will be valid upon signature by the authorized representatives. However, amendments to the annexes may be by an exchange of letters between COFIDE and CIDA.

Article VIII. ENTRY INTO EFFECT AND SIGNATURE

This Agreement and annexes A, B and C which form an integral part of it, will enter into effect upon signature.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the Agreement.

DONE in two copies at Lima, this 26th day of September, 1975, in the Spanish, English and French languages, each version being equally authentic.

Signed on behalf
of the Government of Canada:

[Signed]

PIERRE TROTTIER
Ambassador

Signed on behalf of the Government
of the Republic of Peru:

[Signed]

Embajador LUIS MARCHAND STENS
Secretario General Interino del
Ministerio de Relaciones Exteriores¹

ANNEX A

1. *Purpose of Loan.* The purpose of the Loan shall be to assist in the financing of pre-investment studies and project management-type programmes to be administered by the Corporación Financiera de Desarrollo (COFIDE), the resources of which shall be prioritarily directed to the mining sector in order to finance the costs required in the execution of the Poly-metallic Development Programme for medium-size mining. The resources may also be used in studies which pertain to other economic sectors of Peru.

2. *Use of Loan.* The funds provided under this Development Loan Agreement shall be used exclusively by COFIDE to finance the execution of pre-investment studies and project management-type programmes in the public and private sectors. Except where Canada shall specifically agree otherwise, not less than sixty per cent (60%) of the Loan funds shall be used exclusively to employ the services of Canadian consultants or consulting firms, including universities and similar institutions, or for the purchase of material and equipment in Canada. The remaining forty per cent (40%) of the Loan funds may be used to employ Peruvian or Latin American consultants or consulting firms, including universities and similar institutions. Funds should be withdrawn in such a way as to obtain a nearly proportional use of Canadian and non-Canadian procurement.

No single consulting firm may simultaneously execute studies and projects whose aggregate costs exceed the equivalent of Canadian \$300,000.00 chargeable to the resources of the program, without the prior approval of Canada. For the performance of studies on specific projects whose value exceeds Canadian \$300,000.00, COFIDE shall submit to Canada for approval:

- (i) The tentative terms of reference of the study;
- (ii) A list of three or more firms which it regards as qualified to perform the study.

For the performance of studies whose value does not exceed Canadian \$300,000.00, COFIDE will have the authority to approve the terms of reference of the study and the selection of the firms without reference to Canada.

ANNEX B

PROCUREMENT AND PAYMENT PROCEDURES

1.0. *Procurement procedures*

1.1. *Consultant services.* a) COFIDE shall act as designated agent for the Government of the Republic of Peru.

¹ Acting Secretary General for Foreign Relations.

b) Under the provisions set forth in annex A, paragraph 2, every consulting firm which it is necessary to hire for the execution of the program shall be selected by the following procedures:

- (i) Only consulting firms registered with COFIDE will be eligible to provide services under this Agreement;
- (ii) Unless otherwise agreed by Canada, when COFIDE wishes to retain the services of Canadian firms, it will submit for Canada's approval the names of three Canadian firms from the list of Canadian firms registered with it;
- (iii) The institution or organization for whom these services shall be provided shall invite proposals from the firms approved by Canada and, after delivering to COFIDE copies of all proposals presented and having received approval from COFIDE for the firm of its choice, shall negotiate with that firm the final draft of the contract to be signed between them for the performance of the studies;
- (iv) COFIDE shall then submit the draft of the contract to Canada for its final approval; if the beneficiary prefers, it may proceed to sign the contract with the consulting firm upon approval thereof by COFIDE, provided it makes the validity of the contract contingent on its approval in writing by Canada.

2.0. *Payment procedures*

2.1. For services procured in Canada, CIDA will, on receipt of the contract, issue a purchase order confirmation confirming that payment will be made by CIDA direct to the consultant or institution on certification of claims by COFIDE.

2.2. For services obtained in Peru or Latin America by COFIDE, Canada, at the request of COFIDE, may make advance payments based on estimated expenditures of the contract entered into. Claims for reimbursement of the initial advance will be supported by proof of payment, supported by evidence of delivery or that the services have been performed, certified by COFIDE and forwarded to Canada through the Office of the Embassy.

ANNEX C

RECORDS AND REPORTS

1.0. *Records.* COFIDE shall maintain a separate account for all the operations done in execution of the Program, specifying the studies contracted, the degree to which they have been completed and the specific projects that have been launched on the basis of the studies financed under this Loan.

2.0. *Reports.* COFIDE shall present to Canada, to its entire satisfaction and at the times specified for each, the following reports:

- (i) Within thirty (30) days after the end of each calendar half-year or within such other term as the Parties shall agree to, reports on the execution of the Program, with special mention of the studies that have been completed and the development projects that have been financed as a result of the studies;
- (ii) Such other reports as Canada may reasonably request regarding the investment of the amounts lent and the progress of the Program;
- (iii) Within one hundred and fifty (150) days after the close of each fiscal year of COFIDE and so long as the obligations of Peru under the present Contract shall subsist, three copies of the financial statements of COFIDE at the close of said period (balance sheet and statement of profit and loss) and other complementary financial information related to these statements.

3.0. *Publicity.* COFIDE shall indicate suitably in its publicity programs relating to the Program that the latter is being financed with the cooperation of the Government of Canada.