

No. 6126

**INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
and
SOUTH AFRICA**

Guarantee Agreement — *Third Escom Project* (with annexed Loan Regulations No. 4 and Loan Agreement between the Bank and Electricity Supply Commission). Signed at Washington, on 1 December 1961

Official text: English.

Registered by the International Bank for Reconstruction and Development on 23 April 1962.

**BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
AFRIQUE DU SUD**

Contrat de garantie — *Troisième projet Escom* (avec, en annexe, le Règlement n° 4 sur les emprunts et le Contrat d'emprunt entre la Banque et l'Electricity Supply Commission). Signé à Washington, le 1^{er} décembre 1961

Texte officiel anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 23 avril 1962.

No. 6126. GUARANTEE AGREEMENT¹ (*THIRD ESCOM PROJECT*) BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 1 DECEMBER 1961

AGREEMENT, dated December 1, 1961, between REPUBLIC OF SOUTH AFRICA (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by an agreement of even date herewith between the Bank and Electricity Supply Commission (hereinafter called the Borrower), which agreement and the schedules therein referred to are hereinafter called the Loan Agreement,² the Bank has agreed to make to the Borrower a loan in various currencies equivalent to fourteen million dollars (\$14,000,000), 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 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, has agreed so to guarantee such obligations of the Borrower ;

NOW THEREFORE the parties hereto hereby agree as follows :

Article I

Section 1.01. The parties to this Guarantee Agreement accept all the provisions of Loan Regulations No. 4 of the Bank dated February 15, 1961,² subject, however, to the modifications thereof set forth in Schedule 3³ to the Loan Agreement (said Loan Regulations No. 4 as so modified being hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

Section 1.02. For the purposes of this Guarantee Agreement and of the Loan Agreement, any reference therein or in the Loan Regulations (including any

¹ Came into force on 15 January 1962, upon notification by the Bank to the Government of South Africa.

² See p. 224 of this volume.

³ See p. 238 of this volume.

Schedules thereto) to the "territories" of the Guarantor shall be construed to include a reference to any territory administered by the Guarantor.

Article II

Section 2.01. Without limitation or restriction upon any of the other covenants on its part in this Agreement contained, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and the interest and other charges on, the Loan, the principal of and interest on the Bonds, the premium, if any, on the prepayment of the Loan or the redemption of the Bonds, and the punctual performance of all the covenants and agreements of the Borrower, all as set forth in the Loan Agreement and in the Bonds.

Section 2.02. Without limitation or restriction upon the provisions of Section 2.01 of this Agreement, the Guarantor specifically undertakes, whenever there is reasonable cause to believe that the funds available to the Borrower will be inadequate to meet the estimated expenditures required for carrying out the Project, to make arrangements, satisfactory to the Bank, promptly to cause the Borrower to be provided with such funds as are needed to meet such expenditures

Article III

Section 3.01. It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan by way of a lien on public assets. To that end, the Guarantor undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Guarantor as security for any external debt, such lien 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 that in the creation of any such lien express provision will be made to that effect ; provided, however, that the foregoing provisions of this Section 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 created by the South African Reserve Bank on any of its assets in the ordinary course of its banking business to secure a debt maturing not more than one year after the date on which it is originally incurred.

The term "assets of the Guarantor" as used in this Section includes assets of the Guarantor or of any of its Provinces or other political subdivisions or of any agency of the Guarantor or of any such Provinces or other political subdivisions, including assets of the South African Reserve Bank and of local governing authorities.

Section 3.02. (a) The Guarantor and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end, each of them shall 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 and the international balance of payments position of the Guarantor.

(b) The Guarantor and the Bank shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Loan and the maintenance of the service thereof. 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.

(c) 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 3.03. 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 or fees imposed under the laws of the Guarantor or laws in effect in its territories; provided, however, that the provisions of this Section shall not apply to taxation of, or fees upon, 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 3.04. This Agreement, the Loan Agreement and the Bonds shall be free from any taxes or fees 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 3.05. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid free from all restrictions imposed under the laws of the Guarantor or laws in effect in its territories.

Section 3.06. Without limitation or restriction upon any of the other covenants on its part in this Agreement contained, the Guarantor specifically undertakes that it will not take any action which would prevent or materially interfere with the performance by the Borrower of any of the covenants, agreements and obligations of the Borrower contained in the Loan Agreement and will take or cause to be taken all action necessary and appropriate to enable the Borrower to perform such covenants, agreements and obligations; and, more particularly, the Guarantor undertakes (a) to permit the Borrower to borrow in the markets of the Guarantor such amounts of the currency of the Guarantor as may be needed by the Borrower for the purpose of carrying out the Project, and (b) to sell or cause to be sold to the Borrower in exchange

for currency of the Guarantor such amounts of foreign currencies as may be needed by the Borrower to meet the requirements in such currencies of the Project.

Section 3.07. The Guarantor undertakes that, until the Loan Agreement and the Guarantee Agreement and all obligations of the parties thereunder shall have terminated, the Borrower will continue to have the power and obligation under Section 14 of the Electricity Act, 1958 to adjust its charges from time to time without obtaining the approval of the Electricity Control Board or any one else in order to cover the costs and other amounts referred to in that Section.

Article IV

Section 4.01. The Guarantor shall endorse, in accordance with the provisions of the Loan Regulations, 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 designate in writing are designated as the authorized representatives of the Guarantor for the purposes of Section 6.12 (b) of the Loan Regulations.

Article V

Section 5.01. The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations :

For the Guarantor :

Secretary to the Treasury
Union Buildings
Pretoria
Republic of South Africa

Alternative address for cablegrams and radiograms :

Findep
Pretoria
South Africa

For the Bank :

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington 25, D. C.
United States of America

Alternative address for cablegrams and radiograms :

Intbafrad
Washington, D. C.