No. 7798

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT and SPAIN

Guarantee Agreement—*Railway Project* (with annexed Loan Regulations No. 4 and Loan Agreement between the Bank and the Red Nacional de los Ferrocarriles Españoles). Signed at Washington, on 31 July 1964

Official text: English.

Registered by the International Bank for Reconstruction and Development on 2 June 1965.

BANQUE INTERNATIONALE POUR LA RECONSTRUCTION ET LE DÉVELOPPEMENT et ESPAGNE

Contrat de garantie — *Projet relatif aux chemins de fer* (avec, en annexe, le Règlement n° 4 sur les emprunts et le Contrat d'emprunt entre la Banque et la Red Nacional de los Ferrocarriles Españoles). Signé à Washington, le 31 juillet 1964

Texte officiel anglais.

Enregistré par la Banque internationale pour la reconstruction et développement le 2 juin 1965.

No. 7798. GUARANTEE AGREEMENT[1] (*RAILWAY PROJECT*) BETWEEN SPAIN AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 31 JULY 1964

AGREEMENT, dated July 31, 1964, between SPAIN (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by an agreement of even date herewith[2] between the Bank and Red Nacional de los Ferrocarriles Españoles (hereinafter called the Borrower), which agreement and the schedules therein referred to are hereinafter called the Loan Agreement, the Bank has agreed to make to the Borrower a loan in various currencies equivalent to sixty-five million dollars ($65,000,000), 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[3] (said Loan Regulations No. 4 being hereinafter called the Loan Regulations), with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Agreement, the terms defined in Section 1.02 of the Loan Agreement shall have the same meanings as therein set forth.

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 uncon-

[1] Came into force on 25 February 1965, upon notification by the Bank to the Government of Spain.
[2] See p. 92 of this volume.
[3] See p. 90 of this volume.

ditionally 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 provide the Borrower or 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 governmental 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 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 of its political subdivisions or of any agency of the Guarantor or of any such political subdivision, including the assets of the Instituto Español de Moneda Extranjera and the Banco de España and any other institution performing the functions of a central bank for the Guarantor.

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 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 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. (*a*) The Guarantor covenants that it will not take or permit any of its political subdivisions or any of its agencies or any agency of any political subdivision to take any action which would prevent or interfere with the performance by the Borrower of any of the covenants, agreements and obligations of the Borrower in the Loan Agreement contained, will maintain the corporate existence of the Borrower and will take or cause to be taken all reasonable action (including, but without limitation, the provisions of Section 5.04 (*a*) of the Loan Agreement) which shall be necessary in order to enable the Borrower to perform such covenants, agreements and obligations.

(*b*) Except as the Guarantor and the Bank shall otherwise agree, the Guarantor shall take all such action (including, but without limitation, the prompt provision of funds) as shall be necessary on its part to put into effect and carry out the Plan of Action and the Investment Plan with due diligence and efficiency;

and shall not, without the agreement of the Bank, amend the Plan of Action or the Investment Plan.

Section 3.07. (*a*) The Guarantor shall from time to time take or cause to be taken such necessary or desirable steps (including, but without limitation, adjustments in the rates and fares of the Borrower) as shall be required to provide the Borrower with revenues sufficient, by such date or dates as shall be agreed upon between the Guarantor, and the Bank and the Borrower, to : (i) meet all cash operating expenses of the Borrower and interest payments on debt; (ii) cover depreciation of assets of the Borrower; and (iii) earn a reasonable return of the net fixed assets of the Borrower.

(*b*) Without prejudice to the provisions of Section 2.02 of this Agreement, the Guarantor shall make arrangements, satisfactory to the Bank, promptly to provide the Borrower or cause the Borrower to be provided, during such time as the Borrower's revenues shall be insufficient to meet the items provided for in paragraphs (*a*) (i) and (ii) of this Section and repayment of the Borrower's outstanding debt, with funds sufficient to meet such items and repay such outstanding debt.

Section 3.08. (*a*) The Guarantor undertakes that, if the Guarantor shall propose to construct any new railway line to be owned and operated by the Borrower, the Guarantor shall inform the Bank of such proposal and, before such new construction is started, shall afford the Bank all opportunity which is reasonably practicable in the circumstances to exchange views with the Guarantor and the Borrower with respect thereto.

(*b*) The Guarantor shall take all such action as shall be necessary for the implementation of the arrangements referred to in Section 7.01 (*f*) of the Loan Agreement, for the discontinuance of service on uneconomic railway lines.

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 *Ministro de Hacienda* of the Guarantor and such person or persons as he shall appoint 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 :