

No. 8010

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
and
JAPAN

Guarantee Agreement—*Fifth Expressway Project* (with related letter, annexed Loan Regulations No. 4 and Loan Agreement between the Bank and Nihon Doro Kodan). Signed at Washington, on 26 May 1965

Official text: English.

Registered by the International Bank for Reconstruction and Development on 21 December 1965.

BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
JAPON

Contrat de garantie — *Cinquième projet d'autoroute* (avec lettre connexe et, en annexe, le Règlement n° 4 sur les emprunts et le Contrat d'emprunt entre la Banque et la Nihon Doro Kodan). Signé à Washington, le 26 mai 1965

Texte officiel anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 21 décembre 1965.

No. 8010. GUARANTEE AGREEMENT ¹ (*FIFTH EXPRESS-WAY PROJECT*) BETWEEN JAPAN AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 26 MAY 1965

AGREEMENT, dated May 26, 1965, between JAPAN (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 Nihon Doro Kodan (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 seventy-five million dollars (\$75,000,000), 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 3 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.

¹ Came into force on 20 July 1965, upon notification by the Bank to the Government of Japan.

² See p. 106 of this volume.

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, and the premium, if any, on the prepayment of the Loan or the redemption of the Bonds, all as set forth in the Loan Agreement and in the Bonds.

Section 2.02. Whenever there is reasonable cause to believe that the funds available to the Borrower will be inadequate to meet the estimated expenditures required for the construction of the Project and for the maintenance and repair, during and after such construction, of the Project, all in accordance with sound engineering practices, the Guarantor undertakes to make arrangements promptly to provide the Borrower or cause the Borrower to be provided on reasonable terms with such funds as are needed to meet such expenditures.

Article III

Section 3.01. The Guarantor shall cause to be performed, in accordance with the provisions of the Loan Agreement, all the covenants, agreements and obligations of the Borrower in respect of the Project and will take or cause to be taken all action necessary or appropriate to enable the Borrower to perform such covenants, agreements and obligations.

Section 3.02. (a) As used in this Section, the term "access roads" shall mean public roads connecting the Project with the built-up districts of the area traversed, by the Project and not within the control of the Borrower, and the terms "construct" and "construction" shall mean construct, reconstruct and improve and construction, reconstruction and improvement, respectively.

(b) The Guarantor (i) undertakes to make available, promptly as needed, all funds required to pay its share of the costs of the construction of the access roads, (ii) shall construct or cause to be constructed those access roads within the jurisdiction of the Guarantor or any of its agencies and (iii) shall use its best and most diligent efforts within the limits of its constitutional powers to ensure that local governing authorities (A) contribute, promptly as needed, their share of the costs of the construction of the access roads and (B) construct those access roads within the jurisdiction of such local governing authorities.

(c) The Guarantor shall at all times operate, maintain and repair, or cause to be operated, maintained and repaired, in accordance with sound

engineering and highway practices, those access roads within the jurisdiction of the Guarantor or any of its agencies and shall use its best and most diligent efforts to ensure that local governing authorities shall at all times operate, maintain and repair, or cause to be operated, maintained and repaired, in accordance with sound engineering and highway practices, those access roads within the jurisdiction of such local governing authorities.

(d) The Guarantor shall furnish to the Bank, promptly upon their preparation, the particulars of the program for the access roads and any material modifications subsequently made therein.

Section 3.03. 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 the date of which it is originally incurred.

The term “ assets of the Guarantor ” as used in this Section includes assets of the Guarantor or of any agency of the Guarantor.

The Guarantor further undertakes that, within the limits of its constitutional powers, it will make the foregoing undertaking effective with respect to liens on the assets of any of its political subdivisions and their agencies, including local governing authorities.

Section 3.04. (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

tor 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 3.05. 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 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 3.06. 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 3.07. 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.

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:

Minister of Finance
Ministry of Finance
3-2, Kasumigaseki, Chiyoda-ku
Tokyo, Japan