No. 8274

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
and
KENYA

Guarantee Agreement—*Second East African Railways and Harbours Project* (with related letters and annexed Loan Regulations No. 4). Signed at Washington, on 29 September 1965

Official text: English.

Registered by the International Bank for Reconstruction and Development on 21 July 1966.

BANQUE INTERNATIONALE POUR LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
KENYA

Contrat de garantie — *Deuxième projet relatif aux chemins de fer et aux ports de l'Est africain* (avec lettres y relatives et, en annexe, le Règlement n° 4 sur les emprunts). Signé à Washington, le 29 septembre 1965

Texte officiel anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 21 juillet 1966.

No. 8274. GUARANTEE AGREEMENT[1] (*SECOND EAST AFRICAN RAILWAYS AND HARBOURS PROJECT*) BETWEEN THE REPUBLIC OF KENYA AND THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. SIGNED AT WASHINGTON, ON 29 SEPTEMBER 1965

AGREEMENT, dated September 29, 1965, between REPUBLIC OF KENYA (hereinafter called Kenya) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS (A) by an agreement of even date herewith between the Bank and the East African Common Services Authority (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 thirty-eight million dollars ($38,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that Kenya, the United Republic of Tanzania and the State of Uganda agree to guarantee such loan as provided in the respective Guarantee Agreements between such countries and the Bank;

(B) the United Republic of Tanzania and the State of Uganda have agreed to guarantee such loan as provided in the respective Guarantee Agreements[3] between such countries and the Bank; and

(C) Kenya, in consideration of the Bank's entering into the Loan Agreement with the Borrower and the respective Guarantee Agreements with the United Republic of Tanzania and the State of Uganda, has agreed to guarantee such loan as hereinafter provided;

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,[4] subject, however, to the modifications thereof set forth in Schedule 3[5] to the Loan Agreement (said Loan Regulations No. 4 as so modified being hereinafter called

[1] Came into force on 20 April 1966, upon notification by the Bank to the Government of Kenya.
[2] See p. 327 of this volume.
[3] See pp. 309 and 317 of this volume.
[4] See p. 306 of this volume.
[5] See p. 346 of this volume.

the Loan Regulations), with the same force and effect as if they were fully set forth herein.

Section 1.02. The terms defined in the Loan Agreement shall have the same meaning herein.

Article II

Section 2.01. Without limitation or restriction upon any of the other covenants on its part in this Agreement contained, Kenya hereby unconditionally guarantees jointly and severally with the United Republic of Tanzania and the State of Uganda, 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, Kenya specifically undertakes, whenever there is reasonable cause to believe that the funds available to the Borrower of the Administration will be inadequate to meet the estimated expenditures required for carrying out the Project or the capital development program referred to in Section 5.11 of the Loan Agreement, to make arrangements, satisfactory to the Bank, with the United Republic of Tanzania, the State of Uganda, the Borrower and the Administration or any one or more of them, promptly to provide the Administration or cause the Administration to be provided with such funds as are needed to meet such expenditures.

Article III

Section 3.01. It is the mutual intention of Kenya 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, Kenya undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of Kenya 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.

As used in this Section, the term " assets of Kenya " includes assets of Kenya or of any of its political subdivisions or of any agency of Kenya or of any such political subdivision including its share of the assets of the East African Currency Board or of any other agency fulfilling similar functions in Kenya; and the term " external debt " means any debt payable in any medium other than currency of Kenya, whether such debt is or may become payable absolutely or at the option of the creditor in such other medium.

Section 3.02. (*a*) Kenya 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 Kenya, such information shall include information with respect to financial and economic conditions in the territories of Kenya and the international balance of payments position of Kenya.

(*b*) Kenya 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. Kenya 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*) Kenya shall afford all reasonable opportunity for accredited representatives of the Bank to visit any part of the territories of Kenya 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 Kenya 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 Kenya.

Section 3.04. This Agreement, the Loan Agreement, the Tanzania Guarantee Agreement, the Uganda Guarantee Agreement and the Bonds shall be free from any taxes that shall be imposed under the laws of Kenya 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 Kenya or laws in effect in its territories.

Article IV

Section 4.01. Kenya 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 Kenya for the time being responsible for finance and such person or persons as he shall designate in writing are designated as the authorized representatives of Kenya 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 Kenya:

Permanent Secretary to the Treasury
P.O. Box 30007
Nairobi, Kenya

Alternative address for cablegrams and radiograms:

Finance
Nairobi

For the Bank:

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Alternative address for cablegrams and radiograms:

Intbafrad
Washington, D.C.

Section 5.02. The Minister of Kenya for the time being responsible for finance is designated for the purposes of Section 8.03 of the Loan Regulations.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Guarantee Agreement to be signed