

TREATY ARCHIVES

B1971 / 11

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LOAN NUMBER 725 NZ

# Loan Agreement

(Second Railway Project)

BETWEEN

NEW ZEALAND

AND

INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT

DATED MARCH 1, 1971

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## **Loan Agreement**

AGREEMENT, dated March 1, 1971, between NEW ZEALAND (hereinafter called the Borrower) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

### **ARTICLE I**

#### **General Conditions; Definitions**

SECTION 1.01. The parties to this Agreement accept all the provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank, dated January 31, 1969, with the same force and effect as if they were fully set forth herein, subject, however, to the deletion of Section 5.01 thereof (said General Conditions Applicable to Loan and Guarantee Agreements of the Bank, as so modified, being hereinafter called the General Conditions).

SECTION 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth and the term "the Railways" means the Department of Railways of the Borrower and any successor thereto.

### **ARTICLE II**

#### **The Loan**

SECTION 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions in the Loan Agreement set forth or referred to, an amount in various currencies equivalent to sixteen million dollars (\$16,000,000).

SECTION 2.02. The amount of the Loan may be withdrawn from the Loan Account in accordance with the provisions of Schedule 1 to this Agreement, as such Schedule shall be amended from time to time, for expenditures made (or, if the Bank shall so agree, to be made) in respect

of the reasonable cost of goods and services required for the Project described in Schedule 3 to this Agreement and to be financed under the Loan Agreement; provided, however, that, except as the Bank shall otherwise agree, no withdrawal shall be made on account of expenditures in the territories of any country which is not a member of the Bank (other than Switzerland) or for goods produced in, or services supplied from, such territories.

SECTION 2.03. Except as the Bank shall otherwise agree, the goods and services (other than services of consultants) to be financed out of the proceeds of the Loan shall be procured on the basis of international competition under procedures consistent with the Guidelines for Procurement under World Bank Loans and IDA Credits, published by the Bank in August 1969, and in accordance with, and subject to, the provisions set forth in Schedule 4 to this Agreement.

SECTION 2.04. The Closing Date shall be March 31, 1975 or such other date as shall be agreed between the Borrower and the Bank.

SECTION 2.05. The Borrower shall pay to the Bank a commitment charge at the rate of three-fourths of one per cent ( $\frac{3}{4}$  of 1%) per annum on the principal amount of the Loan not withdrawn from time to time.

SECTION 2.06. The Borrower shall pay interest at the rate of seven and one-quarter per cent ( $7\frac{1}{4}\%$ ) per annum on the principal amount of the Loan withdrawn and outstanding from time to time.

SECTION 2.07. Interest and other charges shall be payable semi-annually on April 15 and October 15 in each year.

SECTION 2.08. The Borrower shall repay the principal of the Loan in accordance with the amortization schedule set forth in Schedule 2 to this Agreement.

SECTION 2.09. If and as the Bank shall from time to time request, the Borrower shall execute and deliver Bonds representing the principal amount of the Loan as provided in Article VIII of the General Conditions.

SECTION 2.10. The Minister of Finance of the Borrower and such other person or persons as he shall appoint in writing are designated as authorized representatives of the Borrower for the purposes of Section 8.10 of the General Conditions.

### ARTICLE III

#### Execution of the Project

SECTION 3.01. The Borrower shall cause the Railways to carry out Part A of the Project with due diligence and efficiency and in conformity with sound engineering, financial and railway practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the purpose.

SECTION 3.02. (a) The Borrower shall carry out Part B of the Project with due diligence and efficiency and in conformity with sound economic and regulatory practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the purpose.

(b) In order to assist the Borrower in making a thorough study of its transport sector in implementation of Part B of the Project, the Borrower shall employ consultants who shall be and the terms and conditions of whose employment shall be mutually agreed between the Borrower and the Bank.

SECTION 3.03. (a) The Borrower shall cause the Railways to insure, or to make adequate provision for the insurance of, the imported goods to be financed out of the proceeds of the Loan against marine, transit and other hazards incident to the acquisition, transportation and

delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable by the Railways to replace or repair such goods.

(b) Except as the Bank shall otherwise agree, the Borrower shall cause all goods and services financed out of the proceeds of the Loan to be used exclusively for the Project.

SECTION 3.04. (a) The Borrower shall cause to be furnished to the Bank, promptly upon their preparation, the plans, specifications and contract documents for the goods to be financed out of the proceeds of the Loan, and any material modifications or amplifications thereof, in such detail as the Bank shall reasonably request.

(b) The Borrower shall or shall cause the Railways to: (i) maintain records adequate to record the progress of the Project (including the cost thereof) and to identify the goods and services financed out of the proceeds of the Loan, and to disclose the use thereof in the Project; (ii) enable the Bank's representatives to inspect the Project, the goods financed out of the proceeds of the Loan and any relevant records and documents; and (iii) furnish to the Bank all such information as the Bank shall reasonably request concerning the Project, the expenditure of the proceeds of the Loan and the goods and services financed out of such proceeds.

#### ARTICLE IV

##### Other Covenants

SECTION 4.01. (a) It is the mutual intention of the Borrower and the Bank that no other external debt shall enjoy any priority over the Loan or the Bonds by way of a lien on governmental assets.

(b) To that end the Borrower (i) represents that at the date of this Agreement no lien exists on any governmental

assets as security for any external debt, and (ii) undertakes that if any such lien shall be created, it 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 in the creation of any such lien express provision will be made to that effect.

(c) The foregoing representation and undertaking shall not apply to: (i) any lien created on property, at the time of purchase thereof, solely as security for payment of the purchase price of such property; and (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

(d) As used in this Section, the term "governmental assets" means assets of the Borrower or of any of its political subdivisions or of any agency of the Borrower or of any such political subdivision, including the Reserve Bank of New Zealand or any institution performing the functions of a central bank for the Borrower.

SECTION 4.02. (a) The Borrower shall maintain or cause to be maintained records adequate to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition, in respect of the Project, of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof, and shall cause the Railways to maintain records adequate to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition of the Railways.

(b) The Borrower shall cause the Railways to: (i) have its accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with sound auditing principles consistently applied, by independent auditors acceptable to the Bank; (ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year, (A) certified copies of its finan-

cial statements for such year as so audited and (B) the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested; and (iii) furnish to the Bank such other information concerning the accounts and financial statements of the Railways and the audit thereof as the Bank shall from time to time reasonably request.

SECTION 4.03. The Borrower shall cause the Railways to take out and maintain with responsible insurers, or to make other provision satisfactory to the Bank for, insurance against such risks and in such amounts as shall be consistent with sound practice.

SECTION 4.04. The Borrower shall cause the Railways to continue to be managed and operated at all times in accordance with sound business, financial and railroad practices under the supervision of capable management and shall cause the Railways to continue to operate, maintain, renew and repair its equipment and property, including the equipment and property included in the Project, in accordance with sound engineering and railroad practices.

SECTION 4.05. (a) Except as the Bank shall otherwise agree, the Borrower shall cause the Railways to take from time to time all necessary measures (including but not limited to adjustments of the tariff structures and rates of the Railways) as shall be required to enable the Railways, out of internally generated resources: (i) to meet interest on and to amortize its debt, (ii) to maintain adequate working capital; and (iii) to finance a reasonable proportion of its capital expenditures, including the replacement of assets.

(b) The Borrower has proposed, and the Bank has agreed, that in order to attain the objectives outlined in paragraph (a) of this Section, the Railways should, prior to meeting interest and other charges on debt, break even in fiscal year 1972 and earn rates of return of 3.5% in 1973,

4% in 1974 and 1975, and 5% in subsequent fiscal years, and the Borrower will direct the Railways accordingly. .

(c) For the purposes of this Section: (i) the term "debt" shall mean obligations of the Railways or of the Borrower incurred on behalf of the Railways that require interest and/or amortization payments; (ii) the rate of return shall be calculated by relating the net operating income for the fiscal year in question to the average of the value of the net fixed assets in operation at the beginning and at the end of that year; (iii) the term "value of net fixed assets in operation" shall mean the gross book value of such assets of the Railways, less the amount of accumulated depreciation as determined from time to time in accordance with sound and consistently maintained methods of valuation; (iv) the term "net operating income" shall mean the difference between (A) gross operating revenue from services and any incidental income, and (B) operating and administrative expenses, taxes (if any), adequate maintenance and depreciation, but excluding interest and other charges on debt; (v) the term "break even" shall mean an equivalence of the items specified under (A) and (B) of sub-section (c)(iv) of this Section; and (vi) the term "fiscal year" shall mean the period of 12 months commencing on April 1 of the previous year and ending on March 31 of the indicated year.

SECTION 4.06. The Borrower shall promptly submit to the Bank for its comments the report resulting from the study constituting Part B of the Project, including in particular the conclusions and recommendations.

## ARTICLE V

### Consultation, Information and Inspection

SECTION 5.01. The Borrower and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end, the Borrower and the Bank shall from time to time, at the request of either party:



(a) exchange views through their representatives with regard to the performance of their respective obligations under the Loan Agreement, the administration, operations and financial condition of the Railways and, in respect of the Project, of the other departments or agencies of the Borrower responsible for carrying out the Project or any part thereof, and other matters relating to the purposes of the Loan; and

(b) 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 Borrower, such information shall include information with respect to financial and economic conditions in the territories of the Borrower, including its balance of payments, and the external debt of the Borrower, of any of its political subdivisions and of any agency of the Borrower or of any such political subdivision.

SECTION 5.02. (a) The Borrower shall furnish or cause to be furnished to the Bank all such information as the Bank shall reasonably request concerning the operations and financial condition of the Railways and, in respect of the Project, of the other departments or agencies of the Borrower responsible for carrying out the Project or any part thereof.

(b) The Borrower shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan, the maintenance of the service thereof, or the performance by the Borrower of its other obligations under the Loan Agreement.

SECTION 5.03. The Borrower shall afford all reasonable opportunity for accredited representatives of the Bank to inspect all plants, sites, works, property and equipment of the Railways and to visit any part of the territories of the Borrower for purposes related to the Loan.

**ARTICLE VI****Taxes and Restrictions**

SECTION 6.01. 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 Borrower or laws in effect in its territories; provided, however, that the foregoing 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 Borrower.

SECTION 6.02. The Loan Agreement and the Bonds shall be free from any taxes on or in connection with the execution, issue, delivery or registration thereof imposed under the laws of the Borrower or laws in effect in its territories and the Borrower shall pay all such taxes, if any, imposed under the laws of the country or countries in whose currency the Loan and the Bonds are payable or laws in effect in the territories of such country or countries.

SECTION 6.03. The payment of the principal of, and interest and other charges on, the Loan and the Bonds shall be free from all restrictions, regulations, controls and moratoria of any nature imposed under the laws of the Borrower or laws in effect in its territories.

**ARTICLE VII****Remedies of the Bank**

SECTION 7.01. If any event specified in Section 7.01 of the General Conditions shall occur and shall continue for the period, if any, therein set forth, then at any subsequent time during the continuance thereof, the Bank, at its option, may by notice to the Borrower declare the principal of the Loan and of all the Bonds then outstanding to be due and payable immediately together with the interest and other charges thereon and upon any such declaration such prin-

cipal, interest and charges shall become due and payable immediately, anything to the contrary in the Loan Agreement or in the Bonds notwithstanding.

### ARTICLE VIII

#### Termination

SECTION 8.01. The date April 30, 1971, is hereby specified for the purposes of Section 11.04 of the General Conditions.

### ARTICLE IX

#### Representative of the Borrower; Addresses

SECTION 9.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 10.03 of the General Conditions.

SECTION 9.02. The following addresses are specified for the purposes of Section 10.01 of the General Conditions:

#### For the Borrower:

Secretary to the Treasury  
P.O. Box 5010  
Wellington, New Zealand

#### Cable address:

Galvanize  
Wellington

#### For the Bank:

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

#### Cable address:

Intbafrad  
Washington, D.C.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Agreement to be signed in their respective names and to be delivered in the District of Columbia, United States of America, as of the day and year first above written.

NEW ZEALAND

*Frank Green*

*[Signature]*

By

*Authorized Representatives*

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

*Simon Delors*

By

*Vice President*

### SCHEDULE 1

#### Withdrawal of the Proceeds of the Loan

1. The table below sets forth the categories of items to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each category:

Category	Amount of the Loan Allocated (Expressed in Dollar Equivalent)
I. About 1200 freight cars and parts for about 600 freight cars	13,865,000
II. Workshop and signalling equipment	610,000
III. Consultants' services	500,000
IV. Unallocated	1,025,000
<b>TOTAL</b>	<u><u>16,000,000</u></u>

2. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of:

- (a) expenditures in currency of the Borrower, or for goods produced in, or services supplied from the territories of the Borrower;
- (b) expenditures prior to the date of this Agreement; and
- (c) payments for taxes imposed under the laws of the Borrower or laws in effect in its territories on goods or services, or on the importation, manufacture, procurement or supply thereof.

3. Notwithstanding the allocation of an amount of the Loan set forth in the second column of the table in paragraph 1 above:

- (a) if the estimate of the expenditures under any Category shall decrease, the amount of the Loan then allocated

to such Category and no longer required therefor will be reallocated by the Bank by increasing correspondingly the unallocated amount of the Loan;

(b) if the estimate of the expenditures under any Category shall increase, a corresponding amount will be allocated by the Bank, at the request of the Borrower, to such Category from the unallocated amount of the Loan, subject, however, to the requirements for contingencies, as determined by the Bank, in respect of any other expenditures.

## SCHEDULE 2

## Amortization Schedule

Date Payment Due	Payment of Principal (expressed in dollars) *
October 15, 1973	405,000
April 15, 1974	420,000
October 15, 1974	435,000
April 15, 1975	450,000
October 15, 1975	465,000
April 15, 1976	485,000
October 15, 1976	500,000
April 15, 1977	520,000
October 15, 1977	535,000
April 15, 1978	555,000
October 15, 1978	575,000
April 15, 1979	600,000
October 15, 1979	620,000
April 15, 1980	640,000
October 15, 1980	665,000
April 15, 1981	690,000
October 15, 1981	715,000
April 15, 1982	740,000
October 15, 1982	765,000
April 15, 1983	795,000
October 15, 1983	825,000
April 15, 1984	855,000
October 15, 1984	885,000
April 15, 1985	915,000
October 15, 1985	945,000

\* To the extent that any portion of the Loan is repayable in a currency other than dollars (see General Conditions, Section 4.02), the figures in this column represent dollar equivalents determined as for purposes of withdrawal.

### Premiums on Prepayment and Redemption

The following percentages are specified as the premiums payable on repayment in advance of maturity of any portion of the principal amount of the Loan pursuant to Section 3.05(b) of the General Conditions or on the redemption of any Bond prior to its maturity pursuant to Section 8.15 of the General Conditions:

<i>Time of Prepayment or Redemption</i>	<i>Premium</i>
Not more than three years before maturity	1¼%
More than three years but not more than six years before maturity .....	2½%
More than six years but not more than eleven years before maturity .....	4%
More than eleven years but not more than thirteen years before maturity .....	6%
More than thirteen years before maturity	7¼%



## SCHEDULE 3

## Description of the Project

The Project is intended to assist the Borrower in the development of a national transportation policy and further to modernize and improve the facilities of the Railways, increase the efficiency of its operations and improve its finances, by carrying out:

A. a program constituting the initial portion of the Railways' current six-year Investment Plan, which program is to be accomplished during a period ending on March 31, 1973, is estimated to require the expenditure of about NZ\$77 million equivalent, and comprises the following principal elements:

1. *Cars*

Procurement of about 2,000 freight cars, 27 passenger cars, 4 vans and 3 railcars.

2. *Locomotives*

Procurement of about 15 main-line and 9 shunting locomotives.

3. *Cook Strait Ferry*

Procurement of one additional rail ferry for inter-island traffic.

4. *Permanent Way*

Renewal and improvement of track, stations and yards, strengthening of bridges, improvement of tunnel clearance.

5. *Miscellaneous*

Modernization of signalling equipment, procurement of vehicles for road service.

B. a study of the transport sector of the Borrower in the light of prevailing and projected economic and social con-

ditions, giving consideration among other things to transport regulations, user charges and investment pricing criteria for different modes of transport, with a view to developing an efficient and economical national transportation policy.

The Project is expected to be completed by December 31, 1973.

**SCHEDULE 4****Procurement****1. Large Contracts**

With respect to any contract for goods to be financed out of the proceeds of the Loan and estimated to cost \$100,000 equivalent or more:

(a) Before bids are invited, the Railways shall furnish to the Bank, for its comments, the text of the invitations to bid and the specifications and other bidding documents, together with a description of the advertising procedure to be followed for the bidding, and shall make such modifications in the said documents or procedure as the Bank shall reasonably request. Any further modification or addition to the bidding documents shall require the Bank's concurrence before it is issued to the prospective bidders.

(b) After bids have been received and evaluated, the Railways shall, before a final decision on the award is made, inform the Bank of the name of the bidder to whom it intends to award the contract and shall furnish to the Bank, in sufficient time for its review, a detailed report on the evaluation and comparison of the bids received. The Bank shall promptly inform the Railways whether it has any objection to the intended award on the ground that it would be inconsistent with any of the procedures set forth or referred to in Section 2.03 of this Agreement and shall state the reasons for any objection it may have.

(c) If a contract shall be awarded according to procedures inconsistent with those set forth or referred to in Section 2.03 of this Agreement or over the Bank's reasonable objection on the ground of inconsistency with such procedures or if the terms and conditions shall, without the Bank's concurrence, materially differ from those on which bids were asked, no expenditures thereunder shall be financed out of the proceeds of the Loan.

(d) A copy of each contract shall be furnished to the Bank promptly after its execution.

*2. Other Contracts*

With respect to any other contract for goods to be financed out of the proceeds of the Loan, the Railways shall, promptly after the contract is awarded and prior to submitting to the Bank the first application for withdrawal of funds from the Loan Account in respect of the contract, furnish to the Bank a copy of the contract as well as a copy of the record of opening of the bids and the bid evaluation report. The Bank shall promptly inform the Railways if it finds that the award of the contract is inconsistent with the procedures set forth or referred to in Section 2.03 of this Agreement and, in such event, no expenditures thereunder shall be financed out of the proceeds of the Loan.