

CONFORMED COPY

CREDIT NUMBER 1820 KE

Development Credit Agreement

(Second Railway Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated September 24, 1987

CREDIT NUMBER 1820 KE

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated September 24, 1987, between REPUBLIC OF KENYA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project;

(B) the Borrower and the Overseas Development Administration of the United Kingdom intend to enter into a memorandum of understanding (the ODA Memorandum of Understanding) for the purpose of making available goods and services to the Borrower with a value of about eight million pounds sterling (L8,000,000) (the ODA Grant) to assist in financing the Project on terms and conditions set forth in the ODA Memorandum of Understanding;

(C) the Project will be carried out by Kenya Railways Corporation (KRC) with the Borrower's assistance and, as part of such assistance, the Borrower will make available to KRC the proceeds of the Credit as provided in this Agreement; and

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement and in the Project Agreement of even date herewith between the Association and KRC;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985, with the last sentence of Section 3.02 deleted (the General Conditions), constitute an integral part of this Agreement.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Project Agreement" means the agreement between the Association and KRC of even date herewith, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the Project Agreement;

(b) "Subsidiary Loan Agreement" means the agreement to be entered into between the Borrower and KRC pursuant to Section 3.01 (b) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Subsidiary Loan Agreement;

(c) "KRC" means Kenya Railways Corporation, a corporation established and existing pursuant to the Kenya Railways Corporation Act, 1978 (No. I of 1978), as amended to the date of this Agreement;

(d) "KSh" means Kenya shillings, the Borrower's currency; and

(e) "FY" means the Borrower's and KRC's fiscal year, beginning July 1 and ending June 30.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in various currencies equivalent to twenty-one million eight hundred thousand Special Drawing Rights (SDR 21,800,000).

Section 2.02. The amount of the Credit may be withdrawn from the Credit Account, in accordance with the provisions of Schedule 1 to this Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and the Association, for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Credit.

Section 2.03. The Closing Date shall be June 30, 1995, or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge at the rate of one-half of one percent (1/2 of 1%) per annum on the principal amount of the Credit not withdrawn from time to time. The commitment charge shall accrue from a date sixty days after the date of the Development Credit Agreement to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or shall be cancelled.

(b) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent (3/4 of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on February 15 and August 15 in each year.

Section 2.07. The Borrower shall repay the principal amount of the Credit in semiannual installments payable on each February 15 and August 15, commencing August 15, 1997, and ending February 15, 2037. Each installment to and including the installment payable on February 15, 2007, shall be one-half of one percent (1/2 of 1%) of such principal amount, and each installment thereafter shall be one and one-half percent (1-1/2%) of such principal amount.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

Section 2.09. KRC is designated as representative of the Borrower for the purposes of taking any action required or permitted to be taken under the provisions of Section 2.02 of this Agreement and Article V of the General Conditions.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end, without any limitation or restriction upon any of its other obligations under the Development Credit Agreement, shall cause KRC to perform, in accordance with the provisions of the Project Agreement, all the obligations of KRC therein set forth, shall take and cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable KRC to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) The Borrower shall:

- (i) make the proceeds of the Credit, allocated from time to time to Category (3) of paragraph 1 of Schedule 1 to this Agreement, available to KRC on the same terms as the Borrower receives the proceeds; and
- (ii) relend the proceeds of the Credit, allocated from time to time to Categories (1) and (2) of paragraph 1 of Schedule 1 of this Agreement, to KRC under a subsidiary loan agreement to be entered into between the Borrower and KRC, under terms and conditions which shall have been approved by the Association which shall include, inter alia, that:
 - (A) the proceeds of the Credit shall be relent at an interest rate of not less than 8.8 percent per annum, for a term of twenty (20) years, including a grace period not exceeding four (4) years; and
 - (B) KRC shall bear the risk resulting from fluctuations in the value of currencies relent to it.

(c) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such manner as to protect the interests of the Association and to accomplish the purposes of the Credit and, except as the Association shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive the Subsidiary Loan Agreement or any provision thereof.

Section 3.02. Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be

governed by the provisions of Schedule 1 to the Project Agreement.

Section 3.03. The Borrower and the Association hereby agree that the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) shall be carried out by KRC pursuant to Section 2.03 of the Project Agreement.

ARTICLE IV

Other Covenants

Section 4.01. During implementation of the Project, the Borrower shall review and discuss with the Association any future investments in the railway subsector, which it proposes to undertake.

Section 4.02. The Borrower shall:

- (a) facilitate the prompt procurement by KRC of spare parts and equipment required for its operations; and
- (b) exempt all goods and services, procured out of the proceeds of the Credit, from all taxes and duties.

Section 4.03. The Borrower shall:

- (a) annually review, with the Association and KRC, payments to meet losses, if any, incurred by KRC in the operation of noncommercially viable services; and
- (b) promptly thereafter arrange the necessary compensation payments to KRC.

ARTICLE V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (h) of the General Conditions, the following additional events are specified:

- (a) KRC shall have failed to perform any of its obligations under the Project Agreement;
- (b) As a result of events which have occurred after the date of the Development Credit Agreement, an extraordinary situation shall have arisen which shall make it improbable that KRC will be able to perform its obligations under the Project Agreement;
- (c) The Kenya Railways Corporation Act, 1978, shall have been amended or repealed so as to affect materially and adversely the ability of KRC to perform any of its obligations under the Project Agreement;
- (d) The Borrower shall have taken any action for the dissolution or disestablishment of KRC or for the suspension of its operations; and
- (e)
 - (i) Subject to subparagraph (ii) of this paragraph, the right of the Borrower to withdraw the proceeds of the ODA Grant made to the Borrower for the financing of the Project shall have been suspended, cancelled or terminated in whole or in part, pursuant to the terms of the agreement providing therefor;
 - (ii) Subparagraph (i) of this paragraph shall not apply if the Borrower establishes to the satisfaction of the Association that: (A) such suspension, cancellation, termination or prematuring is not caused by the failure of the Borrower to perform any of its obligations under such agreement; and (B) adequate funds for the Project are available to the Borrower from other sources on terms and conditions consistent with the obligations of the Borrower under this Agreement.

Section 5.02. Pursuant to Section 7.01 (d) of the General Conditions, the following additional events are specified:

(a) the event specified in paragraph (a) of Section 5.01 of this Agreement shall occur and shall continue for a period of sixty days (60) after notice thereof shall have been given by the Association to the Borrower; and

(b) the events specified in paragraphs (c) and (d) of Section 5.01 of this Agreement shall occur.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Development Credit Agreement within the meaning of Section 12.01 (b) of the General Conditions:

(a) the Association has been notified that all conditions precedent to the initial disbursement of the ODA Grant, other than the effectiveness of this Agreement, have been fulfilled;

(b) the Subsidiary Loan Agreement has been executed on behalf of the Borrower and KRC; and

(c) the General Manager (Finance, Supplies and Information), Maintenance Adviser, and Operations and Planning Adviser shall have been appointed.

Section 6.02. The following are specified as additional matters, within the meaning of Section 12.02 (b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association:

(a) that the Project Agreement has been duly authorized or ratified by KRC and is legally binding upon KRC in accordance with its terms; and

(b) that the Subsidiary Loan Agreement has been duly authorized or ratified by the Borrower and KRC and is legally binding upon the Borrower and KRC in accordance with its terms.

Section 6.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representative of the Borrower; Addresses

Section 7.01. Except as provided in Section 2.09 of this Agreement, the minister for the time being responsible for Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance
P.O. Box 30007
Nairobi
Kenya

Cable address:

FINANCE
Nairobi

Telex:

22003
FOREIGN NAIROBI

For the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

Telex:

INDEVAS
Washington, D.C.

440098 (ITT)
248423 (RCA) or
64145 (WUI)

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

REPUBLIC OF KENYA

By /s/ Sospeter O. Mageto

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Edward V.K. Jaycox

Regional Vice President
Africa

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items so to be financed in each Category:

Amount of the Credit Allocated (Expressed in CategorySDR Equivalent)	% of Expenditures to be Financed	
(1) Civil works	1,940,000	100% of foreign expenditures and 80% of local expenditures
(2) Equipment, spare parts and mate- rials	13,100,000	100% of foreign and 80% of local expenditures
(3) Consultants' services	3,730,000	100% of foreign expenditures and 80% of local expenditures
(4) Unallocated	3,030,000	
TOTAL	21,800,000	

2. For the purposes of this Schedule:

(a) the term "foreign expenditures" means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower;

and

(b) the term "local expenditures" means expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for expenditures prior to the date of this Agreement, except that withdrawals in an aggregate amount not exceeding the equivalent of SDR 400,000, may be made in respect of Category (3) on account of payments made for expenditures before that date, but after June 1, 1987.

SCHEDULE 2

Description of the Project

The objectives of the Project are to assist KRC in: (i) achieving needed organizational restructuring and more commercially oriented managerial skills; and (ii) revitalizing its operating performance.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives:

Part A Institutional Development

1. Improvements to KRC's organizational structure at the corporate level and to its general managerial systems and procedures through the provision of technical assistance.
2. Reorientation of KRC's management and introduction of modern managerial skills at divisional and operational levels through the provision of technical assistance.
3. Improvement of personnel management, job evaluation procedures, manpower planning, management of training activities and curricula through the provision of technical assistance.
4. Improvement of the Railways Training Center through:
 - (a) expansion of existing facilities at the Management Training Center;
 - (b) construction of a training facilities center;
 - (c) rehabilitation of some existing workshops and classrooms;
 - (d) upgrading of dormitories for artisans and construction of additional staff accommodation; and (e) provision of new teaching equipment.

Part B Motive Power

1. (a) Rehabilitation of about five class 87, ten class 71 and class 72 locomotives; and (b) provision of spare parts.
2. Restructuring of layout and work flow at KRC's central workshop in Nairobi, and improving and refurbishing diesel depots at Changamwe, Nairobi and Kisumu.
3. Acquisition and utilization of test stands and dynamometers.
4. Improvement of KRC's Mechanical and Electrical Engineering Department staff's ability to improve workflows, overcome technological difficulties, take inventory and manage the use of spare parts more effectively, by the provision of technical assistance and training.

Part C Operational Improvements

1. Improvement of KRC's general operations, train planning and control, and the lowering of train running times by the provision of technical assistance

to KRC's Traffic Department.

2. Improvement of train crew productivity and locomotive turnaround through: (a) the construction of "running rooms" at Mtito Andei, provision of fueling facilities in Mombasa, Kipevu and Voi, new ground fuel storage tanks at Nakuru and Eldoret, and sand-drying facilities at Kajiado, Sagana and Eldoret depots; (b) replacement of old compressors for air-brake testing equipment; and (c) acquisition and utilization of ballast wagons, end loaders, tallow wagons, a mobile butt welder, UHF radios for shunting locomotives and telephone exchanges.

3. Improvement in the overall management of the investment program and development of maintenance skills in the telecommunications department, through the provision of technical assistance.

4. Carrying out of studies on: (a) ancillary services, including catering, suburban and road services; (b) the viaducts on the Nakuru-Kisumu line; and (c) improvements to the signalling in the Nairobi-Embakasi complex, and to the telecommunications links between Nairobi-Malaba and Nakuru-Kisumu.

* * *

The Project is expected to be completed by December 31, 1994.

