
OFFICIAL
DOCUMENTS

LOAN NUMBER 1874 PO

COMETNA Guarantee Agreement

(Mechanical Industries Project)

between

REPUBLIC OF PORTUGAL

and

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

Dated *October 2*, 1980

LOAN NUMBER 1874 PO

COMETNA GUARANTEE AGREEMENT

AGREEMENT, dated *October 2*, 1980, between REPUBLIC OF PORTUGAL (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by the Loan Agreement of even date herewith between the Bank and Companhia Metalurgica Nacional S.A.R.L. (hereinafter called the Borrower) the Bank has agreed to make to the Borrower a loan in various currencies equivalent to thirty-three million four hundred thousand dollars (\$33,400,000), 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

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 March 15, 1974, with the same force and effect as if they were fully set forth herein (said General Conditions Applicable to Loan and Guarantee Agreements 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, the COMETNA Loan Agreement and the COMETNA Shareholder Agreement have the respective meanings therein set forth.

ARTICLE II

Guarantee; Provision of Funds

Section 2.01. Without limitation or restriction upon any of its other obligations under the COMETNA Guarantee Agreement, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of

the principal of, and interest and other charges on, the Loan, and the premium, if any, on the prepayment of the Loan and the punctual performance of all the other obligations of the Borrower, all as set forth in the COMETNA Loan Agreement.

Section 2.02. Without limitation or restriction upon the provisions of Section 2.01 of this Agreement:

(a) 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 the timely carrying out and completing of the Project promptly to provide the Borrower or cause the Borrower to be provided through the Shareholder with such funds as are needed to meet such expenditures; and

(b) the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the provision of cash funds in accordance with Section 4 of the COMETNA Shareholder Agreement.

Section 2.03. (a) The Guarantor shall timely provide the funds required for carrying out the study under Part D of the Project.

(b) The Guarantor shall fully and timely compensate the Shareholder for all payments made by the Shareholder pursuant to Section 11 of the COMETNA Shareholder Agreement.

ARTICLE III

Other Covenants

Section 3.01. (a) It is the policy of the Bank, in making loans to, or with the guarantee of, its members not to seek, in normal circumstances, specific security from the member concerned but to ensure that no other external debt shall have priority over its loans in the allocation, realization or distribution of foreign exchange held under the control or for the benefit of such member. To that end, if any lien shall be created on any public assets (as hereinafter defined), as security for any external debt, which will or might result in a priority for the benefit of the creditor of such external debt in the allocation, realization or distribution of foreign exchange, such lien shall, unless the Bank shall otherwise agree, ipso facto, and at no cost

to the Bank, equally and ratably secure the principal of, and interest and other charges on, the Loan, and the Guarantor, in creating or permitting the creation of such lien, shall make express provision to that effect; provided, however, that, if for any constitutional or other legal reason such provision cannot be made with respect to any lien created on assets of any of its political or administrative subdivisions, the Guarantor shall promptly and at no cost to the Bank secure the principal of, and interest and other charges on, the Loan by an equivalent lien on other public assets satisfactory to the Bank.

(b) The foregoing 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.

(c) As used in this Section, the term "public assets" means assets of the Guarantor, of any political or administrative subdivision thereof and of any entity owned or controlled by, or operating for the account or benefit of, the Guarantor or any such subdivision, including assets held by any institution performing the functions of a central bank or exchange stabilization fund, or similar functions, for the Guarantor.

Section 3.02. The Guarantor and the Bank shall from time to time on the request of either of them consult with each other regarding the Guarantor's long-term strategy for Portugal's mechanical industries sub-sector and any substantial investments in it.

Section 3.03. The Guarantor shall with the assistance of consultants whose qualifications and experience and terms of reference shall be satisfactory to the Bank, carry out or cause to be carried out a comprehensive study to evaluate the engineering industry sub-sector, its policies and incentives, institutional mechanisms, technological support and management development, capacity and growth prospects of the sub-sector and to recommend action for improvements, in particular with respect to a strategy for developing the sub-sector. The Guarantor shall furnish the Bank this study by December 31, 1981 and review its findings with the Bank and thereafter implement agreed recommendations.

Section 3.04. Without limitation to its obligations under Article II of this Agreement, the Guarantor shall: (a) take or cause to be taken through the Shareholder all reasonable action including provision of funds to assist the Borrower in meeting operational losses and debt service until completion of the Project and its obligations under Sections 5.05 and 5.06 of the COMETNA Loan Agreement and the COMETNA Viability Contract; and (b) except as the Bank shall otherwise agree, refrain from any action which might materially restrict or affect the Borrower's ability to meet its obligations under Section 4.03 of the COMETNA Loan Agreement.

Section 3.05. (a) Should the Guarantor decide to transfer the ownership of the Borrower from the Shareholder to another public entity, it shall inform the Bank of the arrangements intended for such proposed successor of the Shareholder to assume all of the Shareholder's obligations under the COMETNA Shareholder Agreement.

(b) Should the Guarantor wish to transfer the majority ownership or effective control of the Borrower from the Shareholder to a private entity acceptable to the Bank, it will exchange views with the Bank on arrangements for the successor of the Shareholder to assume all of the Shareholder's obligations under the COMETNA Shareholder Agreement.

(c) Prior to an agreement with the Bank on the arrangements referred to in (a) or (b), as the case may be, the Guarantor shall not carry out such transfer and shall not affect the Shareholder's control of the Borrower.

(d) Unless the Bank and the Guarantor otherwise agree, the Guarantor shall not take any action which would relinquish or affect its ownership or effective control of the Borrower or interfere with exercising its rights and obligations as owner of the Shareholder.

Section 3.06. The Guarantor shall take or cause to be taken all reasonable action within its power with respect to the prompt issuance of permits and licences as shall be necessary for the acquisition of the land for the site under Part A and B of the Project and the provision of infrastructural services required for the carrying out of the Project and for its efficient operation at full capacity.

Section 3.07. The Guarantor shall take all action required to collect the administration and guarantee fee described in Section 5.10 of the COMETNA Loan Agreement.

ARTICLE IV

Representative of the Guarantor; Addresses

Section 4.01. The Minister of the Guarantor for the time being responsible for finance is designated as representative of the Guarantor for the purposes of Section 11.03 of the General Conditions.

Section 4.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Guarantor:

Ministério das Finanças e do Plano
Rua da Alfandega
1100 Lisbon
Portugal

Cable address:

Ministério das Finanças
Lisbon

Telex:

12143 MINFIN P

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.

Telex:

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

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, 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 PORTUGAL

By /s/ Dr. Anibal Cavaco Silva
Authorized Representative

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By /s/ R. Chaufoournier
Regional Vice President
Europe, Middle East and North Africa

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

CERTIFICATE

I hereby certify that the foregoing is a true copy of the original in the archives of the International Bank for Reconstruction and Development.

In witness whereof I have signed this Certificate and affixed the Seal of the Bank thereunto this 2nd day of Oct., 1980.

S. V. Chi
FOR SECRETARY